

Sponsored by: City Council

**CITY OF MARATHON, FLORIDA
RESOLUTION 2015-102**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN EMPLOYMENT AGREEMENT BETWEEN CHARLES LINDSEY AND THE CITY OF MARATHON, FLORIDA FOR CITY MANAGER SERVICES; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Charter of the City of Marathon, Florida (the "City") establishes a Council-Manager form of government pursuant to which the City Manager is the Chief Administrative Office of the City; and

WHEREAS, the City desires to employ the services of Charles Lindsey as City Manager.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Employment Agreement between Charles Lindsey and the City of Marathon, Florida, attached hereto as Exhibit "A" (the "Agreement"), is approved, together with such non-material changes as may be made by the City Attorney. The Mayor is authorized to execute the Agreement on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Marathon, Florida, this 8th day of September, 2015

THE CITY OF MARATHON, FLORIDA



Mayor Chris Bull

AYES: Keating, Kelly, Senmartin, Zieg, Bull
NOES: None
ABSENT: None
ABSTAIN: None


ATTEST:



Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE
CITY OF MARATHON, FLORIDA ONLY:**



David Migut, City Attorney

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is made and entered into this 8th day of September 2015, by and between the City of Marathon, Florida, a Florida municipal corporation (the "City") and Charles E. Lindsey ("City Manager").

WITNESSETH:

WHEREAS, Section 7(3) of the City Charter provides that the City Manager shall be the chief administrative officer of the City; and

WHEREAS, it is the desire of the City to secure and retain the services of the City Manager; and

WHEREAS, the City Manager desires to be employed as the City Manager for the City.

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

SECTION 1. DUTIES

The City Manager shall be the chief administrative officer of the City and shall perform the functions and duties specified in the City Charter and the City's Code of Ordinances, and shall also perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

SECTION 2. TERM

This Agreement shall be for a term of three (3) years and renewable by further agreement of the parties. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of the City Manager at any time, subject only to the provisions set forth in the City Charter and Section 11 of this Agreement. Likewise, nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Manager to resign at any time from the City Manager position, subject only to the provisions set forth in Section 11 of this Agreement.

SECTION 3. COMPENSATION

The City agrees to pay the City Manager for his services rendered an annual base salary of \$141,000.00 payable in equal biweekly installments. In addition to any performance-based increases, as specified in Section 17 of this Agreement, beginning in calendar year 2016, any cost-of-living increases will be provided at the same time to the City Manager consistent with those provided to other City employees generally.

The City encourages the City Manager to become a Credentialed City Manager by the International City/County Management Association ("ICMA"). In addition to paying reasonable professional development expenses, as specified in Section 8 of this Agreement, if the City Manager is designated as a Credentialed Manager by the ICMA, the City agrees to provide the City Manager with a five percent (5%) increase to the City Manager's base salary in effect at that point in time.

SECTION 4. HEALTH, DISABILITY AND LIFE INSURANCE BENEFITS

In consideration for the base salary listed in Section 3, the City Manager agrees to waive his right to utilize the health insurance options provided by the City to full time employees.

Notwithstanding this waiver of health coverage, the City shall provide term life insurance for the City Manager in the same amount as all other City employees, and shall also make available to the City Manager dental insurance, vision insurance, and all other insurance options, excluding health coverage, that are offered or provided to all full time City employees.

SECTION 5. DEFERRED COMPENSATION AND RETIREMENT

The City shall pay, on the City Manager's behalf, the same percentage of City Manager's base salary as is paid by the City on behalf of other full time City employees into the 401(a) Retirement Plan each pay period.

The City shall also provide the City Manager with a City-paid contribution, payable biweekly, to the City's 457 deferred compensation plan in an amount equal to ten percent (10%) of the City Manager's base salary, provided that such contribution shall not exceed the maximum allowable contribution as established annually by the IRS.

SECTION 6. VACATION AND SICK LEAVE

The City Manager shall earn and be credited with Vacation Leave at a rate equal to the highest rate earned by any other employee of the City. The amount will be capped in accordance with the City's policy, currently 152 hours.

The City Manager shall receive the same Sick Leave that is provided to other full time City employees.

SECTION 7. RESIDENCY

The City Manager shall establish and maintain permanent residence within the City's geographical boundaries within thirty (30) days of the City Manager's start date.

SECTION 8. PROFESSIONAL DEVELOPMENT

The City recognizes that the City Manager's attendance at professional development and training courses are beneficial to both the City Manager and the City. The City agrees to budget for and pay for reasonable and customary travel and subsistence expenses of the City Manager to attend courses and seminars that are necessary for his professional development related to City issues.

SECTION 9. GENERAL BUSINESS EXPENSES

The City shall pay reasonable and necessary professional dues and subscriptions for the City Manager to participate in national, regional, state, and local associations and organizations essential for the City Manager's continued professional development.

SECTION 10. OFFICE EQUIPMENT

The City shall provide the City Manager with the use of desktop and laptop computers with appropriate software, a cellular telephone (PDA/smartphone) and such other equipment as may be necessary for the City Manager to make himself available to perform his duties and to be able to maintain communication with the City Council, City staff, and City residents at all times, as approved in the City's annual budget.

SECTION 11. TERMINATION AND SEVERANCE PAY

The City Manager serves at the pleasure of the City Council. The City may, at any time whatsoever, for any lawful reason whatsoever terminate the employment of the City Manager by an affirmative vote of a majority of the entire City Council as prescribed by the City Charter. In such event, the City Council will give written notice of termination to the City Manager of the decision of the City Council not less than thirty (30) days prior to the effective date of the termination of employment. The City Manager will be entitled to a lump sum severance payment equal to twenty (20) weeks of base salary in compliance with Section 215.425(4)(a), Florida Statutes, to be paid on the effective date of the termination of employment at the City Manager's rate of pay on the date of separation from employment.

The City shall not be required to pay the severance payment set forth in the above paragraph in the event the City Council terminates the employment of the City Manager because of an adjudication of guilt of any felony, or because of a finding of misconduct as defined by Section 443.036(29), Florida Statutes. Severance pay is prohibited if the City Manager is terminated for misconduct as defined by Section 443.036(29), Florida Statutes. The current statutory language reads:

(29) "Misconduct," irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in *pari materia* with each other:

- (a) Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than \$50, or theft of employer property or property of a customer or invitee of the employer.
- (b) Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent, or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.
- (c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.
- (d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.
- (e)1. A violation of an employer's rule, unless the claimant can demonstrate that:
 - a. He or she did not know, and could not reasonably know, of the rule's requirements;

- b. The rule is not lawful or not reasonably related to the job environment and performance; or
 - c. The rule is not fairly or consistently enforced.
2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

The City shall not be required to pay severance pay if the City Manager voluntarily and under free will resigns the position of City Manager. If the City Manager voluntarily resigns, then he shall give the City Council written notice no later than thirty (30) days prior to the effective date of the resignation of employment as City Manager.

This Agreement may also be terminated by mutual agreement, death, or retirement.

Unless otherwise specified in this Agreement, should the City Manager leave the employ of the City, the City Manager, or his beneficiary, shall be entitled to receive payment of all accrued and unused Vacation Leave, calculated at the City Manager's base salary in effect upon the date of termination.

SECTION 12. MOVING AND RELOCATION EXPENSES

In connection with the relocation of the City Manager and his family to the City of Marathon, the City shall reimburse the City Manager for necessary and reasonable expenses incurred in moving and relocating the City Manager's family and belongings [up to a maximum of \$10,000]. The City Manager shall document all moving and relocation expenses with receipts, cancelled checks or credit card statements, and the City shall reimburse the City Manager for all such documented expenses within thirty (30) days of the City's receipt of such documentation.

SECTION 13. INDEMNIFICATION

Pursuant to Sections 111.07 and 111.071, Florida Statutes, the City will provide a civil defense to any legal action brought against the City Manager. This section shall survive the termination of this Agreement or any other separation of the City Manager's employment.

SECTION 14. BOND

The City shall bear the full cost of any fidelity or other bonds required of the City Manager under any law.

SECTION 15. NOTICES

All notices, requests, and other communications required or permitted to be given under this Agreement shall be in writing (including telefax or teletype) and shall be sent by certified mail, postage prepaid, return receipt requested, or shall be hand delivered or delivered by a recognized national overnight courier service or shall be sent by electronic communication, whether by telefax or teletype, addressed as follows:

If to City Manager: City Manager, City of Marathon
9805 Overseas Highway
Marathon, Florida 33050

If to City: Mayor, City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
(With a copy to the City Clerk)

SECTION 16. HOURS OF WORK/EXCLUSIVE EMPLOYMENT

The City Manager acknowledges that the proper performance of the duties of the position will require the City Manager to generally observe normal business hours and will also often require the performance of necessary services outside of normal business hours. The City Manager agrees to devote such additional time as is necessary for the full and proper performance of the City Manager's duties and that the compensation herein provided includes compensation for the performance of all such services. However, the City intends that reasonable time off be permitted the City Manager, such as is customary for exempt employees, so long as the time off does not interfere with the normal conduct of the City Manager's Office.

The City Manager shall remain in the exclusive employ of the City and shall not accept any other employment during the term of this Agreement without the prior approval of the City Council.

The City encourages the City Manager to accept invitations to speaking engagements or other opportunities to communicate with the community, to make use of and share data and information with relevant persons and groups, and encourages the City Manager to participate in pertinent seminars, groups, associations, and organizations, as well as in informational meetings with those individuals whose particular skills, expertise, or backgrounds would serve to improve the capacity of the City Manager to perform his duties.

The City Manager shall be entitled to the same official paid holidays as all other employees.

SECTION 17. PERFORMANCE EVALUATION

The City Council shall annually review and evaluate the performance of the City Manager at the first regular City Council meeting in February of each year. The first annual review and evaluation under this Agreement shall take place at the first regular City Council meeting in February 2017. The review and evaluation may be in accordance with specific written criteria developed by the City Council, in conjunction with the City Manager. Further, the individual Council Members shall provide the City Manager with the written evaluations and provide the City Manager ample opportunity to respond. In effecting the provisions of this section, the City and the City Manager mutually agree to abide by the provisions of applicable law.

If the City Manager receives an above average evaluation, the City agrees to provide an increase between 3 and 5 percent of the then current base salary of the City Manager. The exact amount shall be determined by City Council and shall be effective on the first day of the pay period immediately following approval of the increase by City Council.

SECTION 18. NO REDUCTION IN BENEFITS

The City shall not at any time during this Employment Agreement take action to reduce the salary, compensation, or any other benefits of the City Manager without the written consent of the City Manager.

SECTION 19. START DATE

The City Manager intends to begin employment with the City on January 4, 2016. The City acknowledges that the City Manager must be fully released from his previous employment in order to fulfill his responsibilities as City Manager, and that due to the nature of City Manager's previous employment, an exact separation date from previous employment is uncertain at the time this Agreement is executed. Based on these factors, City agrees that City Manager may delay his start date for up to thirty (30) days after January 4, 2016, provided City Manager provides notice of a new start date to the City on or before December 18, 2015.

SECTION 20. ETHICAL COMMITMENTS

The City Manager shall not endorse candidates, make financial contributions, sign or circulate petitions, or knowingly participate in fundraising activities for individuals seeking or holding elected office in the City, nor seek or accept any personal enrichment or profit derived from confidential information, or holding office, or misuse of public time. The City shall support the City Manager in keeping these commitments by refraining from any order, direction, or request that would require the City Manager to undertake any of the aforementioned activities. Specifically, neither the City Council nor any individual member thereof shall request the City Manager to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fund-raising activity for individuals seeking or holding elected office, nor to handle any matter involving personnel on a basis other than fairness, impartiality, and merit. The City Manager voluntarily agrees to this and shall not cause this provision to formulate any claim against the City whatsoever. The City Manager acknowledges the above is in no way a restriction on his freedom of speech, and if so claimed is deemed immediately invalid.

SECTION 21. AUTOMOBILE

The City Manager, at his discretion, may use a City vehicle in the performance of his duties and responsibilities as the City Manager.

SECTION 22. MISCELLANEOUS PROVISIONS

It is understood and agreed that this document incorporates all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreement, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and with equal dignity herewith.

If any provision, or any portion thereof, contained in this Agreement is held 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.

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.

The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by the City Manager.

Florida law shall govern this Agreement and any litigation which may arise from this Agreement shall be filed and litigated in the Circuit Court in and for Monroe County, only after mediation to be held within thirty (30) days of notice of any claim or breach between the parties.

Both the City and the City Manager knowingly, voluntarily, and irrevocably waive their right to a trial by jury in any civil proceeding that may be initiated by either party with respect to any term or condition of this Agreement.

Either party may request the renegotiation of any provision of this Agreement at any time. If the parties are unable to reach agreement, these terms will remain unchanged.

If the City Manager dies during the term of his employment, the City shall pay to the estate of the City Manager the compensation which would otherwise be payable to the City Manager up to the end of the month in which his death occurs.

This Agreement will be construed and interpreted according to its language and not strictly against either the City Manager or the City, regardless of authorship.

This Agreement shall create no rights or claims whatsoever in any person other than a party hereto.

[The Rest of this page is intentionally left blank]


IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement the day and year first written above.



Charles Lindsey



Witness Signature



Printed Name

THE CITY OF MARATHON, FLORIDA



Chris Bull, Mayor

ATTEST:



Diane Clavier, City Clerk

(City Seal)

APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:



David Migut, City Attorney