

AMENDMENT NO. 1
to the
EMPLOYMENT AGREEMENT
between
THE CITY OF LAFAYETTE, OREGON
and
ROBERT S. WILLOUGHBY

This AMENDMENT No. 1 to the EMPLOYMENT AGREEMENT of the 16th day of September, 1997, by and between the CITY OF LAFAYETTE, OREGON (hereinafter referred to as "CITY") and ROBERT S. WILLOUGHBY (hereinafter referred to as "EMPLOYEE").

WITNESSETH

WHEREAS, CITY and EMPLOYEE wish to amend the EMPLOYMENT AGREEMENT between the CITY and EMPLOYEE they entered on the 16th day of September, 1997 and thereby maintain the professional and businesslike relationship presently existing between EMPLOYEE and CITY;

WHEREAS, said amendments are to reflect the changed conditions between the parties that have arisen since the execution of the original EMPLOYMENT AGREEMENT;

NOW THEREFORE, in consideration of the mutual covenants set out, the CITY and EMPLOYEE mutually agree as follows:

SECTION I.

Except as specifically set out herein, the terms and conditions of the EMPLOYMENT AGREEMENT shall remain in full force and effect .

SECTION II.

This AMENDMENT No. 1 shall become effective June 1, 1999 and continue thereafter for a period of three (3) years, two (2) months until August 30, 2002.

SECTION III.

Subsection (B) is hereby replaced and two new subsections -- (C) and (D) -- are added to SECTION III of the EMPLOYMENT AGREEMENT which new subsections are to read as follows:

(B) Termination For Cause. In the event of a termination under this provision, this Agreement shall not be deemed to construe a waiver of statutory or constitutional rights or remedies otherwise available to the EMPLOYEE. EMPLOYEE's employment with the CITY may be terminated immediately in the sole discretion of the CITY upon the occurrence of any of the following events:

1. EMPLOYEE refuses to comply with the written policies, standards and regulations of the CITY now in existence or which may be from time to time established;
2. The CITY has reasonable cause to believe EMPLOYEE has committed fraud, misappropriated City funds, goods or services to EMPLOYEE's own benefit and/or other similar acts of misconduct such that the City is injured thereby; or
3. EMPLOYEE refuses to perform EMPLOYEE's duties as City Administrator as those duties are set out in either the City Code or Charter or as may be established by state statute.

(C) In the event EMPLOYEE is terminated before the expiration of the term of this AMENDMENT NO. 1 for reasons other than those set out in Subsection III(B) above, of the AGREEMENT, and EMPLOYEE is willing and able to perform his duties as City Administrator, then and in that event, CITY agrees to pay EMPLOYEE a sum equal to six months salary in six (6) equal monthly installments.

(D) In the event EMPLOYEE wishes to voluntarily terminate his employment with the CITY before the expiration of the term of this AMENDMENT No. 1, EMPLOYEE agrees to provide CITY with not less than ninety (90) days written notice.

SECTION IV.

Subsections (A), (D) and (E) of SECTION IV of the EMPLOYMENT AGREEMENT are hereby replaced with the following:

(A) Salary. Commencing on July 1, 1999 the City agrees to pay EMPLOYEE an annualized salary of \$ 48,132, less taxes and other allowable and lawful deductions. Said salary shall be paid in installments and at the same intervals as the City pays its

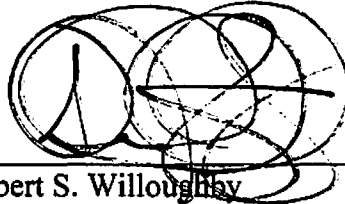
other employees. Said salary shall be reviewed for its adequacy on not less than an annual basis by the CITY and the EMPLOYEE at either the EMPLOYEE's or the CITY's request.

- (D) Sick Leave. EMPLOYEE shall, commencing on July 1, 1999 and continuing through the term of this AMENDMENT No. 1 shall accrue sick leave at the rate of eighty (80) hours for each year of service under this Agreement.
- (E) Administrative Leave. EMPLOYEE shall, commencing on July 1, 1999 and continuing through the term of this AMENDMENT accrue eighty (80) hours of administrative leave for each year of service under this AMENDMENT No. 1.

IN WITNESS WHEREOF, the CITY OF LAFAYETTE, OREGON has caused via motion passed at the City Council meeting of ~~27~~²⁶ June, 1999 this AMENDMENT NO. 1 be signed and executed by the Mayor on behalf of the CITY and ROBERT S. WILLOUGHBY has signed and executed this Agreement in duplicate, this ~~27~~²⁶ day of June, 1999.



Theresa Syphers, Mayor
City of Lafayette, Oregon



Robert S. Willoughby

O'DONNELL RAMIS CREW
CORRIGAN & BACHRACH

JEFF H. BACHRACH
PAMELA J. BEERY
MARK L. BUSCH
D. DANIEL CHANDLER ++
DOMINIC G. COLLETTA**
CHARLES E. CORRIGAN*
STEPHEN F. CREW
MARTIN C. DOLAN
PAUL C. ELSNER
GARY F. FIRESTONE*
WILLIAM E. GAAR
G. FRANK HAMMOND*
MALCOLM JOHNSON*
MARK P. O'DONNELL
JAMES E. OLIVER, JR.
TIMOTHY V. RAMIS
WILLIAM J. STALNAKER

ATTORNEYS AT LAW
1727 N.W. Hoyt Street
Portland, Oregon 97209

TELEPHONE: (503) 222-4402
FAX: (503) 243-2944

PLEASE REPLY TO PORTLAND OFFICE

September 15, 1997

CLACKAMAS COUNTY OFFICE
181 N. Grant, Suite 202
Canby, Oregon 97013
TELEPHONE: (503) 266-1149

VANCOUVER, WASHINGTON OFFICE
First Independent Place
1220 Main Street, Suite 451
Vancouver, Washington 98660-2964
TELEPHONE: (360) 699-7287
FAX: (360) 699-7221

JAMES M. COLEMAN
SUSAN J. WIDDER
SPECIAL COUNSEL

- * ALSO ADMITTED TO PRACTICE IN WASHINGTON
** ALSO ADMITTED TO PRACTICE IN CALIFORNIA
++ ALSO ADMITTED TO PRACTICE IN WASHINGTON AND MONTANA

Mr. Robert S. Willoughby
City Administrator
P.O. Box 55
Lafayette, OR. 97127

RE: Employment Agreement

Dear Bob:

Enclosed please find a revised employment agreement for your signature and that of the Mayor.
Call me with any questions.

Sincerely yours,



Paul C. Elsner

Enclosure
pce/acm/56052/employk.lt1

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT, made and entered into this 16th day of September, 1997, by and between the CITY OF LAFAYETTE, OREGON (hereinafter referred to as "CITY") and ROBERT S. WILLOUGHBY (hereinafter referred to as "EMPLOYEE").

WITNESSETH

WHEREAS, CITY and EMPLOYEE desire a written agreement creating a professional and businesslike relationship serving as the basis for effective communication and to avoid misunderstanding; now, therefore;

In consideration of mutual covenants herein contained and for consideration herein specified, the CITY and EMPLOYEE mutually agree:

SECTION 1. EMPLOYMENT, DUTIES AND AUTHORITY.

The CITY has agreed to employ ROBERT S. WILLOUGHBY as City Administrator. EMPLOYEE agrees to accept said employment.

The authority of EMPLOYEE, consistent with state law, City Charter and ordinance, shall include, but not be limited to, the following:

- the overall management, administration and direction of City operations;
- the hiring, and disciplining of all City employees except Municipal Judge and City Attorney;
- the negotiation, execution and administration of City contracts within budget appropriations pursuant to City policy and ordinance;
- providing policy advice to the City Council; and
- open communication with the community to foster responsive and courteous public service.

Any reduction or revocation of either the duties or authority of EMPLOYEE, except by mutual written consent, shall constitute a breach of this Agreement.

The Mayor and City Council agree to the principle of non-interference in the administration as necessary to orderly and efficient implementation of Council policy. The Mayor and City Council agree to direct their concerns and communications concerning the administration of the City through the City Administrator. EMPLOYEE agrees to respond promptly to all inquiries from the City Council whether made individually or collectively.

SECTION II. TERM.

This Agreement shall commence on August 18, 1997, and continue thereafter for a period of two (2) years until August 17, 1999.

- A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of EMPLOYEE at any time, subject only to the provisions set forth in this Agreement.
- B. EMPLOYEE agrees to remain in the exclusive employ of the CITY during the two (2) year term of this Agreement.

SECTION III. TERMINATION AND SEVERANCE.

- A. Termination Without Cause. This Agreement may be terminated by the CITY for any reason whatsoever upon giving ninety (90) days calendar days written notice to the EMPLOYEE.
- B. Termination For Cause. In the event of a termination under this provision, this Agreement shall not be deemed to construe a waiver of statutory or constitutional rights or remedies otherwise available to the EMPLOYEE. EMPLOYEE's employment with the CITY may be terminated immediately in the sole discretion of the CITY upon the occurrence of any of the following events:
 - 1. EMPLOYEE fails or refuses to comply with the written policies, standards and regulations of the CITY that are now in existence or are from time to time established;
 - 2. The CITY has reasonable cause to believe EMPLOYEE has committed fraud, misappropriated City funds, goods or services to EMPLOYEE's own benefit and/or other similar acts of misconduct such that the City is injured thereby; or
 - 3. EMPLOYEE fails to perform faithfully or diligently EMPLOYEE's duties as City Administrator.

In the event EMPLOYEE is terminated pursuant to this provision, said termination shall be deemed to be for cause.

SECTION IV. SALARY, HOURS OF WORK, VACATION AND SICK LEAVE.

- A. Salary. Commencing on August 18, 1997 and continuing through December 31, 1997, the City agrees to pay EMPLOYEE an annualized salary of \$36,000, less taxes and other allowable and lawful deductions. Said salary shall be paid in installments and at the same intervals as the City pays its other employees. On or

before 1 January 1998, the City will do an analysis of salaries paid to Administrators of similar sized municipalities to determine if the above salary is appropriate. Should the survey show otherwise, the salary will be subject to adjustment on or after January 1, 1998.

- B. Vacation. EMPLOYEE shall accrue vacation at the rate of one hundred sixty (160) hours per year. No additional accrual of vacation time shall occur in the first year of EMPLOYEE's employment with the CITY. In the event employment with the CITY is terminated, either voluntarily or otherwise, EMPLOYEE shall be paid an amount equal to the value of EMPLOYEE's accrued vacation hours.
- C. Holiday Benefit. EMPLOYEE shall receive payment for all City observed holidays.
- D. Sick Leave. EMPLOYEE shall be deemed to have accrued forty (40) hours of sick leave as of the date of hire. Thereafter, EMPLOYEE shall accrue forty (40) hours of sick leave for each year of service under this Agreement.
- E. Administrative Leave. EMPLOYEE shall be deemed to have accrued eighty (80) hours of paid administrative leave as of the date of hire. Thereafter, EMPLOYEE shall accrue forty (40) hours of administrative leave for each year of service under this Agreement.

SECTION V. RETIREMENT, DISABILITY AND HEALTH INSURANCE.

- A. Retirement. The CITY agrees to pay all amounts required of either the employer or the EMPLOYEE under Oregon's Public Employees Retirement System (PERS) once EMPLOYEE satisfies the eligibility requirements imposed by PERS.
- B. Health Insurance. The CITY agrees to provide coverage and make required premium payments for EMPLOYEE and EMPLOYEE's dependents for comprehensive medical and dental plans as provided in the City Personnel Policies.

SECTION VI. PROFESSIONAL DEVELOPMENT AND EXPENSE.

- A. The CITY encourages the professional growth and development of EMPLOYEE and encourages participation, as EMPLOYEE deems appropriate, in professional associations, short courses, seminars and conferences including, but not limited to: membership in the International City Management Association (ICMA) and the League of Oregon Cities (LOC). The CITY expects EMPLOYEE to attend the LOC Annual Conference. EMPLOYEE may attend the ICMA Northwest Regional Conference as long as the conference is held in Oregon or Washington, and funds permit EMPLOYEE's attendance to it and the LOC conference. The

CITY shall permit a reasonable amount of time for EMPLOYEE to attend and the CITY shall pay for the direct costs necessary for travel, subsistence and registration subject to reasonable availability of funds and as approved in the annual budget.

- B. In the event EMPLOYEE uses EMPLOYEE's personal vehicle on CITY business, the CITY shall provide monthly vehicle expense reimbursement at the then current federal auto allowance rate.
- C. The CITY recognizes that certain expenses are incurred by EMPLOYEE on behalf of the CITY and agrees to reimburse or pay said expenses upon receipt of appropriate confirmation.

SECTION VII. ANNUAL GOAL-SETTING AND PERFORMANCE EVALUATION.

The Mayor and the City Council shall periodically identify concerns to EMPLOYEE either by informal discussions with EMPLOYEE or more formally. The City Council and EMPLOYEE shall meet at least annually to evaluate and assess the performance of EMPLOYEE in meeting or progressing towards the goals formally adopted by the City Council as well as the exercise of authority granted in Section I of this Agreement. These annual evaluations shall be in closed Executive Session.

In the event the CITY determines that the performance of EMPLOYEE is unsatisfactory in any respect or needs significant improvement in any area, the CITY shall describe these concerns in writing and in reasonable detail or with specific examples so as to be objective and positive in nature.

SECTION VIII. GENERAL PROVISIONS.

- A. Professional Liability. The CITY agrees to defend, hold harmless and indemnify EMPLOYEE from any and all demands, claims, suits, actions and legal proceedings brought against EMPLOYEE in EMPLOYEE's individual capacity, or in EMPLOYEE's official capacity as agent and employee of the CITY, consistent with the terms of the Oregon Tort Claims Act (ORS 30.260 to 30.300).
- B. Nothing shall restrict the ability of the CITY and EMPLOYEE to amend or adjust the terms of this Agreement. However, no amendment or adjustment shall be valid unless in writing and signed by both the CITY and EMPLOYEE. EMPLOYEE reserves the right to discuss the terms of this Agreement with the City Council as a whole in either closed Executive Session or open Regular Session as state law allows and as EMPLOYEE deems appropriate.

- C. **Severability.** 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 and shall not be affected, and shall remain in full force and effect.
- D. **Attorneys Fees.** If suit or action is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.
- E. **Mediation.** Should any dispute arise between the parties regarding the terms of this Agreement or the terms of any Exhibit or work or services covered thereby, it is agreed that such dispute will be submitted to a mediator prior to any litigation. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten days, or if the parties fail to agree on a mediator within ten days, a mediator shall be appointed by the presiding judge of the Washington County Circuit Court upon request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this section.
- F. **Integration.** This Agreement contains the entire Agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

IN WITNESS WHEREOF, the CITY OF LAFAYETTE, OREGON has caused this Agreement to be signed and executed by its Mayor and ROBERT S. WILLOUGHBY has signed and executed this Agreement, both in duplicate, the day and year first written above.



Ron Ross, Mayor
City of Lafayette, Oregon



Robert S. Willoughby

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