

EMPLOYMENT AGREEMENT
between
The City of Lafayette
and
David Justin Boone, Jr.

THIS EMPLOYMENT AGREEMENT, made, entered into, and effective this ____ day of November, 2009, by and between the CITY OF LAFAYETTE, OREGON (hereinafter referred to as "CITY") and DAVID JUSTIN BOONE, Jr. (hereinafter referred to as "ADMINISTRATOR").

RECITALS:

- A. The Charter of the City of Lafayette (Charter) provides that a majority of the members of the City Council shall appoint a City Administrator for a definite or indefinite term, without regard to political considerations and solely on the basis of administrative qualifications, fix the Administrator's compensation and conditions of employment, and that they may remove Administrator with or without cause at any time.
- B. City desires to employ the services of a City Administrator, and David Justin Boone, Jr. desires to serve in that capacity, on the following terms:

AGREEMENT:

Section 1. Duties.

Administrator agrees to perform the functions and duties of this position in accordance with the City Charter, state law, and applicable city ordinances, policies and procedures. Administrator understands that he will be required to attend all meetings of the City Council unless excused by the Council or Mayor. Administrator recognizes that the City Council is the policy making body of the City and agrees to respond promptly and equally to any and all members of the Council regarding their concerns.

Section 2. Termination and Severance Provisions.

Administrator's employment may be terminated:

- A. The term of this Agreement shall be 2 years. The Administrator serves at the pleasure of the City Council and may be removed from this position without cause at any time.

- B. In the event that Administrator's employment is terminated by the City without cause, the City agrees to pay Administrator three months salary and benefits as severance pay. This compensation shall be paid in monthly installments, each of which shall be equal to the monthly salary and benefits due and payable to Administrator for his last full month of employment prior to notice of termination.

Termination without cause shall include the actual discharge of the Administrator by the Council, resignation of the Administrator following a salary or benefit reduction, or a resignation of the Administrator following a formal request by the Council that the Administrator resign.

- C. In the event Administrator's employment is terminated for just cause, Administrator shall not be entitled to any severance pay.

1. Grounds for just cause termination shall include indictment for an illegal act, malfeasance of office, willful or wanton neglect of duties, or conviction for any felony. If Administrator is terminated for an indictment, and if Administrator is not convicted on an indictment within two years, then the City shall pay three months severance pay equal to the monthly salary and benefits due and payable to Administrator for his last full month of employment prior to notice of termination.
2. If the City believes it has just cause for terminating Administrator's employment, it shall provide Administrator with a written notice of the reason for termination no later than Administrator's last day of employment with the City. If Administrator contests the City's determination of just cause, Administrator shall, upon written request made within ten (10) days of the date of termination, request a determination by an impartial third party chosen by mutual agreement of Administrator and the City. The decision of the third party shall be final and binding on both parties and shall be the Administrator's exclusive remedy on the issue of just cause. The foregoing process for determining just cause affects only whether Administrator shall receive severance pay and shall not delay the termination of Administrator's employment with the City.

- D. In the event of termination for incapacity preventing Administrator's performance of the essential functions and duties of the position, when it appears such incapacity will last for more than six (6) months and a reasonable accommodation will not allow Administrator to perform the essential functions and duties of the position, Administrator shall not be

entitled to severance pay. Administrator shall be allowed to concurrently exhaust any accrued Paid Time Off (PTO), and any family medical leave for which Administrator may be eligible, prior to being terminated under this provision.

- E. In the event of voluntary resignation, Administrator shall provide thirty (30) days written notice to the Council, and, if requested by Council, a plan for interim administration of the City.
- F. The parties may terminate this Agreement by mutual consent in writing at any time.

Section 3. Suspension.

- A. Administrator may be suspended by the Council with full pay and benefits at any time.
- B. Administrator may be suspended for cause by the Council without pay for a period not to exceed 30 days under the following circumstances:
 - 1. With written agreement of a majority of the Council and the Administrator.
 - 2. After a hearing and a majority vote of the Council when the Administrator has received written notice of the charges at least five working days prior to such hearing.
 - 3. After request by Council to discuss allegations against Administrator and the Administrator refuses to discuss allegations with Council.

Section 4. Compensation.

- A. Base Salary. City agrees to pay Administrator an annual salary of \$68,000, payable at the same time as other City employees are paid. Administrator shall receive a 3.5 percent increase in base salary effective 12 months after the date of hire. Thereafter, the Administrator shall receive an annual increase as mutually agreed with the City. The City Administrator position is exempt from the overtime provisions of the Fair Labor Standards Act and is not eligible for overtime pay.
- B. Travel and Other Expense Reimbursement. Administrator shall be reimbursed for all official travel and other expenses incurred as a direct result of being the Administrator at the IRS rate for mileage plus actual cost of meals, lodging, registration or other expenses.

- C. Professional Development. Attendance at the annual League of Oregon Cities Conference, conferences of the Oregon City Managers, and other appropriate conferences and meetings shall be budgeted and encouraged by the Council for the Administrator. The City shall pay membership in the ICMA and OCCMA on behalf of the Administrator.
- D. Retirement. City agrees to pay all amounts required of either the employer or the employee under the Oregon Public Employees Retirement System (PERS).
- E. Medical and Dental. City agrees to provide coverage and make required premium payments for Administrator and Administrator's dependents for comprehensive medical and dental plans as provided in the City Personnel Policies or Employee Handbook.
- F. Holidays. Administrator shall receive time off at full payment for all City observed holidays.
- G. Paid Time Off. Administrator shall receive Paid Time Off (PTO) at a rate of ten (10) hours per month. PTO can be used at the Administrator's discretion and accumulated to a maximum of 120 hours. Any unused PTO will be compensated upon termination of this agreement.

Section 5. Performance Evaluation.

- A. The City Council shall review and evaluate Administrator's performance in May of each year. The review and evaluation shall be in accordance with specific written criteria developed by City in consultation with Administrator. The criteria for evaluation shall be adopted by the Council at a meeting or meetings open to the public after an opportunity for public comment.
- B. The Council shall conduct the evaluation in executive session, unless Administrator requests that it be conducted at a meeting open to the public. Administrator shall receive a written copy of the performance review, from the Mayor, within one month of its completion.

Section 6. Bonding.

The city shall bear the full cost of any fidelity or other bonds required of Administrator by any Employment Agreement

law, ordinance or requirement of the City.

Section 7. Indemnification.

The City shall defend and indemnify Administrator against any tort, professional liability claim or demand or other legal action arising out of an alleged act or omission occurring in the performance of Administrator's duties as City Administrator, in accordance with its duties and obligations under ORS 30.285 et seq., unless prohibited by law. Administrator's duties do not include the commission of any criminal act or intentional tort. This indemnification shall include the cost of defense, provided that the City will choose or approve legal representation for Administrator and will retain control over the defense of the claim, including the sole power to compromise and settle any claim or action and pay the amount of the settlement or judgment.

Section 8. Other Terms and Conditions.

- A. If any provision, or any portion thereof, contained in this Agreement, is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable, shall not be affected and shall remain in full force and effect. It is the intent of the parties that this Agreement and the appointment of the City Administrator be, in all aspects, in compliance with the provisions of the Charter relating to this position. If any provision of this Agreement is capable of two constructions, only one of which complies with the Charter, the construction that complies with the Charter shall control. If any provision of the Agreement conflicts with the Charter, the Charter shall control and the conflicting provision of this Agreement shall be of no effect. All other provisions not in conflict with the Charter shall remain in full force and effect.
- B. The parties may, from time to time, agree to modify the terms of this Agreement, provided that the amendment is reduced to writing and made a part of this Agreement.
- C. Administrator agrees to reside within the city limits of Lafayette, Oregon within six (6) months of hire date and continue to reside within the city limits of Lafayette Oregon during the term of their employment.

Section 9. Review by Independent Counsel.

Administrator acknowledges that the City has advised him to have this Agreement independently reviewed by an attorney of his choice.

Section 10. Voluntary Agreement.

Administrator acknowledges that he understands the terms of this Agreement, that he has entered into it voluntarily, and that the complete terms of the parties' agreement are set forth in this written document. Administrator further acknowledges that he has not relied on any other representations or promises by the City, its agents, employees or representatives except those contained in this Agreement.

IN WITNESS WHEREOF, the City of Lafayette has caused this Agreement to be signed and executed on its behalf by its Mayor, and by Administrator on the day and year first above written.

ADMINISTRATOR

CITY OF LAFAYETTE

David Justin Boone, Jr.

By _____
Chris Heisler, Mayor