

EMPLOYMENT AGREEMENT

This Agreement made and entered into this 29th day of June, 2022, by and between the City Council on behalf of the City of Portsmouth, Virginia, a political subdivision of the Commonwealth of Virginia (the “City”/“Council”), and Tonya D. Chapman (the “Employee”/“City Manager”), provides as follows:

WITNESSETH

WHEREAS, the City desires to employ the Employee as its City Manager; and,

WHEREAS, it is the desire of the Council to provide certain benefits, to establish certain work conditions of employment, and to establish working conditions for the Employee, for the benefit of the public; and

WHEREAS, the Employee desires to accept said employment as City Manager on terms that benefit the public; and

WHEREAS, it is recognized that the bond that exists between the Council and its appointed City Manager is their common obligation to make local government work for the good of the citizens in the community; and

WHEREAS, the success of the local government in meeting citizens’ expectations and community goals depends significantly on that relationship;

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

Section 1. Duties and Responsibilities of the Parties

- A. The City hereby employs the Employee as its City Manager, to perform the functions and duties, and to exercise all rights and power, as specified in the Portsmouth Charter and City Code, as it may be amended from time to time, and to perform such other legally permissible and proper duties and functions as the Council from time to time assigns for the benefit of the City, its citizens, and its employees. The respective duties and responsibilities are set forth in the following section.
- B. In their respective dealings with each other, the Employee and the Council will honor the following general guidelines:
- The Council is the chief policy-making body of the government and has a continuing responsibility for setting mission and policy versus routine administrative matters in accordance with Section 3.11 of the City Charter. The Employee is the Chief Administrative Officer and Chief Executive for the City, as per Section 5.01 of the City Charter, and shall exercise the powers and duties as enumerated in Section 5.02 of the City Charter and afforded by the Code of Virginia.
 - The Employee will provide to the Council timely and adequate information and recommendations so that the Council may properly perform its mission and policy responsibilities in an orderly and fully informed manner.
 - The Council and the Employee have a shared responsibility to ensure that their relationship is open and honest.
 - The Council has a responsibility to function as a single collegial body in giving direction to the Employee, and the Employee has a responsibility to deal equally with all Council Members.

· The Employee will have an evaluation annually or at such other intervals as deemed necessary by Council. The evaluation will be based on:

1. A review of the past year's performance as to whether the expectations of the Council were clearly communicated and realized.
2. Specific feedback to the Employee about her performance.
3. Establishment of definite goals and objectives and a plan and/or contract for the upcoming year.

C. The Employee and the Council accept these responsibilities for the benefit of the public.

Section 2. Term; Residence

Pursuant to Section 5.01 of the City Charter the Employee shall be appointed as City Manager for an indefinite period beginning June 30, 2022 and shall serve at the pleasure of Council.

- A. If the Employee voluntarily resigns, then she shall give Council at least thirty days written notice.
- B. The Employee will establish *bona fide* residence within the City of Portsmouth, within six months of her start date, as required by Section 2-107(a) of the Portsmouth City Code.

Section 3. Termination and Severance Pay.

- A.1. Termination by the City without Cause. The Council shall have the right to terminate this Agreement at any time by providing the Employee with written notice setting forth the effective date of termination and paying severance pay, as set forth in Section 3B below.

A.2. Termination by the City for Cause. The City Council shall have the right to terminate

this Agreement for any specified reason, including but not limited to, one of the following causes by giving the Employee written notice setting forth the reason for termination and setting forth the effective date of termination:

- a) Conviction of a crime or conduct injurious to the City whether or not in the performance of official duties and whether or not Employee has commenced actual employment.
- b) A material breach of responsibilities as City Manager.
- c) Willfully engaging in conduct, which is demonstrably injurious to the City, monetarily or otherwise.

In determining whether the Employee shall be terminated for cause, the City shall not act in an arbitrary or capricious manner. The Employee shall have no grievance rights or right of appeal for any termination for cause. In the event of termination for cause, this Agreement shall cease at once and the City shall be under no obligation to the Employee except to pay for her such compensation/benefits as she may be entitled to as of the date of termination.

B. In the event of termination of employment by the Council for any reason other than termination for cause, the Employee shall receive severance pay. Severance pay shall consist of continued salary and already accrued annual leave up to 352 hours at the Employee's then-current rate of compensation, paid bi-weekly in the normal manner, for a period of twenty-four (24) months if the Employee is terminated without cause on or before June 30, 2023. The severance period is reduced to twelve (12) months for any

termination of the Employee, without cause, that occurs after June 30, 2023. The City shall have the sole option to pay severance in lump sum amounts prior to the end of the respective severance period. The Employee shall not receive or be entitled to any benefits during any part of the respective severance period and no benefits, including annual leave, shall accrue during said period.

- C. Council shall not have the right to reduce the salary of the City Manager or reduce any other financial benefits due to the City Manager, unless such reduction in salary or other financial benefits is commensurate with a similar reduction imposed upon all City employees.
- D. In the event of the breach of any material term or condition hereof by the City, Employee shall have the right to provide the City with written notice of the said breach. The City shall have thirty (30) days from the delivery of written notice to cure the breach (the “Cure Period”). Provided however, that if the breach is not reasonably capable of cure within thirty (30) days, then at the City’s option the Cure Period may be extended for an additional sixty (60) days so long as: (a) the City has notified the Employee in writing that it is extending the Cure Period; (b) the City has acknowledged the breach; (c) the City has commenced the process of curing the breach; and (d) the City thereafter diligently prosecutes the cure to completion. In the event the City fails to cure the breach during the Cure Period (including if and as extended), then within thirty (30) days of the expiration of the Cure Period (the “Resignation Period”) the Employee shall have the right to submit her resignation, effective immediately, in which event Employee shall be entitled to severance pay, as outlined in Section 3B, as if the Employee had been terminated without cause. Provided however, that Employee shall not have the right to submit her resignation

and receive severance pay under this paragraph if the Employee does not submit her resignation during the Resignation Period.

Section 4. Compensation and Benefits

Section 4.1. Compensation

- A. The City shall pay the Employee at the initial base salary rate of \$200,000.00 per year, pro-rated during the period of employment, to be paid biweekly at the same time that the other City employees are paid.
- B. This Agreement shall be automatically amended to reflect any salary adjustments that are provided or required by the City's compensation policies to include all salary adjustments on the same basis as applied to all other City employees.
- C. In addition, consideration shall be given on an annual basis during performance evaluations to an increase in compensation.
- D. At any time during the term of the Agreement, the City may, in its discretion, review and adjust the salary of the Employee, but in no event shall the Employee be paid less than the salary set forth in Section 4.1.A., except such reduction as described in Section 3.C., above.

Section 4.2. Health and Life Insurance

- A. The City agrees to provide and to pay the premiums for health, vision, and dental for the Employee equal to that which is provided to all other City employees, and as per the rate sheet attached, as it may be amended. If the City's insurance requires a waiting period before the Employee is eligible for coverage under Employer's plan, the City agrees to

reimburse the Employee for the costs of COBRA insurance for the same, during the initial waiting period.

- B. The Employee will enroll in the VRS System in order to be a participant. The City does not provide long-term disability coverage.
- C. The City shall pay the amount of premium due for term life insurance in the amount of two (2) times the Employee's annual base salary, including all increases in the base salary during the life of this Agreement. The Employee shall name the beneficiary of the life insurance policy. Any such term life insurance policy shall include an indemnity clause to provide for an additional optional benefit of at least one (1) times the Employee's annual base salary for the death of the Employee.
- D. Except as otherwise provided in this Agreement, the Employee shall be entitled, at a minimum, to the highest level of benefits enjoyed by and/or available to other employees, department heads, or general employees of the City as provided by the City's policies, charter, ordinances, or personnel rules and regulations or other practices.

Section 5. Allowances

The City shall provide an automobile allowance to the Employee in the amount of \$10,000 per year, pro-rated during the period of employment, to be paid biweekly at the same time that the other City employees are paid. In addition to the Employee being reimbursed for those expenses incurred pursuant to Section 7 of this Agreement, the City shall provide general expenses to the Employee in the amount of up to \$3,600 per year, pro-rated during the period of employment, to be paid biweekly at the same time that the other City employees are paid.

Section 6. Dues and Subscription

The City shall budget and pay the professional dues and subscriptions of the Employee necessary for her continuation and full participation in national, state, and local associations necessary and desirable for her continued professional participation, growth and advancement for the good of the City.

Section 7. Travel/Professional Development

The City shall budget and pay the travel and related expenses as per the City of Portsmouth travel policy, of the Employee for all City business, professional and official travel, meetings and occasions adequate to continue the professional development of the Employee and to adequately pursue necessary official and other functions for the City, including but not limited to, the annual meetings of state, national, and local government associations, and such other national, regional, state and local groups or committees thereof on which she serves as a member.

Section 8. Other Benefits

The Employee shall be provided the same benefits provided to other executive management staff of the City, to include participation in the Virginia Retirement System (VRS) as a full and regular participant and the City shall make all the appropriate City contributions on the Employee's behalf. In addition to the annual and sick leave provided pursuant to City Code Sections 2-112 and 2-113, Employee shall be advanced seven days of annual leave and seven

days of sick leave. Employee's carry-over of annual leave is limited to 352 hours a year as is her payout of annual leave in the event of termination of employment with severance as provided in Section 3B.

Section 8.1 Supplemental Retirement

- A. In addition to the City's payment to VRS referenced above, the City agrees to execute and keep in force all necessary agreements provided by MissionSquare (formerly known as ICMA Retirement Corporation (ICMA-RC)) or any other Section 457 deferred compensation plan for the Employee's participation, or continued participation, in such supplemental retirement plan. In addition to the base salary paid by the City to the Employee, the City agrees to pay annually Twenty-six Thousand Dollars (\$26,000) to the designated plan on the Employee's behalf, in an equal proportionate amount each pay period. The City shall promptly and fully disclose the financial impact of any amendment to the terms of the Employee's retirement benefit. In lieu of contributing to a Section 457 deferred compensation plan, all or part of the dollar value of this contribution may be used, at the Employee's option, to purchase previous service from another qualified plan.

Section 8.2 Moving and Relocation Expenses

- A. The City will reimburse the Employee for a one time expense of moving her personal property from Arlington, VA to Portsmouth, VA. Said moving expenses include packing, moving, unpacking, and insurance charges. The Employee shall provide evidence of actual moving expenses by securing quotations from a minimum of two (2) companies. The Employee shall select the lowest priced quote.

Section 8.3 Communication and Productivity Expenses

- A. Recognizing the importance of constant communication and maximum productivity, the City shall provide the Employee, for business and personal use, a laptop computer, software, mobile phone, and/or tablet computer required for the Employee to perform her duties and to maintain communication with City staff and officials, as well as other individuals who are doing business with the City.
- B. Upon termination of Employee's employment, the equipment described herein shall remain the property of the City and at the discretion of the City any mobile phone number may be transferred to the Employee.

Section 9. Other Terms and Conditions of Employment

The Employee shall be indemnified against possible claims, lawsuits, damages, and judgments in the same manner as other City officials. Council shall fix any such other terms and conditions of employment as it may determine from time to time, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, the City Code, or any other law.

Section 10. General Provisions

- A. The text herein shall constitute the entire agreement between the parties. It supersedes and replaces any possible prior oral promises, representations, or agreements between the parties.
- B. If any provision or any portion thereof contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of the Agreement or portion thereof, shall be deemed severable, and the remaining portions shall remain in full force and effect.

- C. The singular shall include the plural, and vice versa, unless the context clearly indicates otherwise.
- D. This is a Virginia agreement, to be interpreted, applied, and construed according to the laws of the Commonwealth of Virginia, the Portsmouth City Charter, and the City Code.

{SIGNATURES ON FOLLOWING PAGE}

IN WITNESS WHEREOF, the City Council on behalf of the City of Portsmouth, Virginia has caused this Agreement to be signed and executed on its behalf by its Personnel Committee, Vice Mayor, and duly attested by the Chief Deputy City Clerk, and approved as to form and legality by the City Attorney, and the Employee has signed and executed the Agreement, effective as of the date first stated above.

Tonya D. Chapman, Employee

De'Andre Barnes, Vice Mayor
Personnel Committee

ATTEST:

Anita Y. Sherrod, Chief Deputy City Clerk

APPROVED AS TO FORM AND LEGALITY:

Lavonda N. Graham-Williams, City Attorney