

EMPLOYMENT AGREEMENT

This Agreement is entered into this 13th day of April, 2020 by and between the CITY OF ROYAL OAK, a Michigan Municipal Corporation with offices at 211 Williams Street, Royal Oak, Michigan 48067 (the "City") and PAUL J. BRAKE, an individual whose current residence is 140 Diamond Avenue, Morgantown, West Virginia 26505 ("Brake").

Whereas, the City wishes to employ Brake as its City Manager under the terms and conditions set forth in this Agreement; and

Whereas, Brake wishes to be employed by the City as its City Manager under the terms and conditions set forth in this Agreement.

Therefore, in consideration for the mutual promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the City and Brake agree as follows:

1. TERM

This Agreement shall remain in full force and effect until terminated by either the City or Brake as provided in Section 14. It is expressly understood that Brake will be an at-will employee, and subject to Brake's ability to resign pursuant to Section 14, the duration of his employment is unspecified and rests solely in the discretion of the City.

2. DUTIES AND AUTHORITY

The City agrees to employ Brake as its City Manager effective May 21, 2020 to perform the functions and duties specified in the Charter of the City of Royal Oak, as amended, and all other legally permissible and proper duties and functions, subject to the general supervision of and pursuant to the order, advice and direction of the City Commission.

3. HOURS OF WORK

The City recognizes that Brake must devote a great deal of time outside normal office hours to City business, and to that end, Brake shall be allowed to establish an appropriate work schedule. The basic workday shall consist of eight (8) hours in a calendar day, with not more than an additional sixty (60) minutes off for lunch without pay. The basic work week shall consist of forty (40) hours in five (5) consecutive eight (8) hour days.

4. COMPENSATION

The City agrees to pay Brake an annual salary of one hundred fifty thousand dollars (\$150,000.00), payable in bi-weekly installments, as compensation for his service as City Manager. The City Commission shall conduct an annual evaluation of Brake's performance, subject to a process, form, criteria and format that shall be mutually discussed by the parties, upon which the Commission may consider increasing Brake's wages. This evaluation shall occur no later than March 31 of each year.

5. BENEFITS

A. Health Insurance. The City agrees to pay Brake's existing premium obligations for continuing health coverage from his prior employer (commonly known as COBRA coverage) until Brake is eligible to become a participant in the City's health insurance plan. When Brake becomes eligible to participate in the City's health insurance plan, he agrees to enroll and to pay the same percentage of the illustrative premium rate for the plan as the City's Executive Department Heads on a monthly basis through payroll deduction.

B. Life Insurance. The City agrees to provide fifty thousand dollars (\$50,000.00) of term life insurance at no cost to Brake.

C. Memberships. The City agrees to pay the membership dues and fees for Brake to continue to be a member of the International City/County Management Association (ICMA) and the International Economic Development Council (IEDC). The City also agrees to reimburse Brake for his May 2020 Certified Economic Developer (CEcD) recertification application fee. Subject to the approval of the City Commission during the City's annual budget process, the City agrees to pay the cost of Brake's attendance at the annual ICMA and IEDC conferences.

D. Harvard Kennedy School. Subject to the approval of the City Commission during the City's annual budget process, the City agrees to pay the cost of Brake's attendance at the Harvard Kennedy School's Executive Education Program every five (5) years, beginning in 2024.

E. The City agrees to bear the cost of any fidelity or other bond required of Brake in his capacity as City Manager.

F. Except as otherwise provided in this Agreement, Brake shall receive the benefits set forth in the Administrative Rules for Executive Department Heads, as may be amended; provided, however, that Brake shall not accrue compensatory time for any hours worked in excess of the basic workday and work week described in Section 3.

6. MOVING AND RELOCATION EXPENSES

The City agrees to pay Brake's actual and necessary expenses to move from West Virginia to Michigan, including packing, moving, up to three (3) months storage, unpacking and insurance charges. Brake shall obtain three (3) estimates from reputable moving companies, and the City shall pay an amount equal to the lowest of the three estimates directly to the moving company selected by Brake.

7. VEHICLE/HOUSING ALLOWANCE

A. The City agrees to provide Brake with a vehicle allowance of six hundred dollars (\$600.00) per month for the use of his personal vehicle while serving in the capacity of City Manager.

B. The City agrees to pay Brake a one-time bonus of ten thousand dollars (\$10,000.00) if he establishes permanent residency within the City of Royal Oak on or before May 21, 2021.

8. TECHNOLOGY

The City agrees to provide Brake with a cell phone allowance of seventy-five dollars (\$75.00) per month for the use of his personal cell phone while serving in the capacity of City Manager.

9. RETIREMENT

Subject to IRS and plan limits, the City agrees to make an annual contribution to retirement account(s) of Brake's choice with ICMA-RC and/or Nationwide in the amount of fifteen percent (15%) of his base pay, payable in bi-weekly installments.

10. PAID TIME OFF

A. Brake will begin employment with twenty-five (25) vacation days, and in each subsequent year of service with the City, shall be allowed twenty-five (25) vacation days.

B. Brake shall receive other leave time (including, but not limited to, sick leave, holidays, personal business days and bereavement leave) as provided in the Administrative Rules for Executive Department Heads.

11. GENERAL BUSINESS EXPENSES

The City recognizes that Brake may incur certain expenses of a non-personal, community, or job-affiliated nature, and agrees to reimburse Brake or pay those expenses for him. The

Director of Finance is hereby authorized to disburse such monies upon production of appropriate receipts, statements, or affidavits. Brake shall not be reimbursed for any mileage, including but not limited to daily travel to and from his home to the City.

12. INDEMNIFICATION

To the fullest extent permitted by law, the City shall defend, hold harmless and indemnify Brake against any tort, professional liability claim, demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring during the performance of Brake's duties as City Manager, or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involves willful or wanton conduct. Brake may request and the City shall not unreasonably refuse to provide independent legal representation at the City's expense in the event of a conflict between Brake's interests and those of the City. Legal representation, which is currently provided by the City through the Michigan Municipal Risk Management Authority (MMRMA), shall extend until a final decision of the legal action, including any appeals brought by any party. The City shall indemnify Brake against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings, including attorney fees, and other liabilities incurred by, imposed upon, or suffered by Brake in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties. Any settlement of any claim must be made with the prior approval of the City for this indemnification to be available.

13. OUTSIDE ACTIVITIES

Subject to the prior approval of the City Commission, Brake may accept other teaching, consulting, or business opportunities. The compensation provided for under this Agreement shall not be offset by any income Brake may earn from any other source.

14. TERMINATION

For purposes of this Agreement, termination shall occur when either of the following take place:

- A. A majority of the membership of the City Commission votes to terminate this Agreement at a duly authorized public meeting.
- B. Brake submits a written letter of resignation to the City Commission, in care of the City Clerk. Brake shall provide a minimum of sixty (60) days advance written notice to the City. If Brake fails to provide this notice, he shall not be entitled to payment of any accrued vacation, sick leave, or personal business time upon separation.

15. SEVERANCE

- A. If Brake's contract is terminated pursuant to Section 14(A) for any reason other than just cause, he shall be entitled to severance pay for a period of up to nine (9) months at his rate of pay on the effective date of termination. For purposes of this Agreement, just cause shall include, but not be limited to, acts of insubordination, conduct unbecoming a city manager, actions which would be criminal in nature, acts of moral turpitude, gross negligence or acts of a similar nature. It will also include less serious offenses which have not been corrected through progressive steps. The City shall pay severance pay in biweekly installments until Brake has received the severance described herein, or until Brake secures and commences other

employment, whichever occurs first. For the period that Brake is receiving severance pay, the City shall continue to pay its portion of the cost of health insurance for Brake and any eligible dependents, and for life insurance for Brake. Brake shall not accrue any additional service credit or receive any additional benefits for the period that he is receiving severance pay.

B. If Brake's employment is terminated pursuant to Section 14(A) for just cause, or if his employment is terminated pursuant to Section 14(B), he shall not be entitled to any severance pay.

16. RETURN OF CITY PROPERTY

Upon termination of this Agreement, Brake shall return all City property in his possession or under his control, including but not limited to any keys, computer or other office equipment, cell phone, credit card, and the originals and copies of all paper or electronic files, records, or other documents. This does not preclude Brake from retaining copies of any document he produced or that was produced under his direction.

17. ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement between the parties, and supersede all other agreements, whether oral, written, or implied, regarding the subject matter hereof.

18. AMENDMENT

This Agreement can be modified or amended only in a subsequent written document signed by both the City and Brake.

19. WAIVER OF BREACH

A waiver of any breach of this Agreement shall not constitute a waiver of any future breach.

20. BINDING EFFECT

This Agreement shall be binding upon the City and Brake, as well as their heirs, assigns, executors, personal representatives and successors in interest.

21. SEVERABILITY

If any provision of this agreement is found to be invalid, all other provisions shall remain in full force and effect.

22. COUNTERPARTS

This Agreement may be executed in one or more counterparts, and the signature pages may be transmitted by facsimile, each of which shall be deemed an original and all of which together shall be considered one and the same Agreement.

23. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

24. ARBITRATION

The exclusive remedy for any dispute, statutory or otherwise, arising out of Brake's employment or relating to this Agreement, shall be final and binding arbitration to be held in Oakland County, Michigan under the rules of the American Arbitration Association. The City and Brake understand that they are voluntarily waiving the right to trial by jury. Any claim that is not filed within ninety (90) days after it arises is waived.

25. VOLUNTARY AGREEMENT

Brake has entered into this agreement freely and voluntarily, after having been advised to seek advice of legal counsel and having had adequate opportunity to do so.


Witnesses:

Deanna Braswell
Deanna Braswell

Bonnie Holland
Bonnie Holland

Carol Allen

CITY OF ROYAL OAK


Michael Fournier, Mayor

Melanie Halas
Melanie Halas, City Clerk

PAUL J. BRAKE



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