

Meeting Date
August 22, 2017



AGENDA	
Section	Consent
Item No.	11.D.2

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	County Manager's Agreement
DEPT/OFFICE:	District 4

Requested Action:

It is requested that the Brevard County Board of County Commissioners consider and approve the County Manager's Agreement.

Summary Explanation & Background:

On Thursday, August 10th the Board Chairman, County Attorney and County Manager met and negotiated the terms of the County Manager's Agreement for the Board's consideration and approval.

Negotiated modifications from the former County Manager's Agreement include:

- The annual salary has been updated to the current salary of \$188,180,98.
- A provision was added providing for up to 20 months of out of state service credit to be purchased in accordance with F.S. 121.1115.
- Provision has been eliminated that provided for increases in base salary and other benefits based on an annual performance evaluation.
- Reduces payment upon retirement for sick leave earned after execution of this Agreement from 50% to 30%.
- Clarifies that employee must use at least half of his newly accrued annual leave every year and may carry over the remainder.
- Eliminates required payments for membership in ICMA, FCCMA and FGFOA.
- Eliminates provision that employee is an active full time member of ICMA.
- Agreement shall become effective upon execution by the parties.

Clerk to the Board Instructions:

Exhibits Attached: County Manager's Agreement

Contract /Agreement (If attached): Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager Frank Abbate	Assistant County Manager John Denninghoff	Department Director / Extension
Commissioner Curt Smith (D4)	Interim Assistant County Manager Jim Liesenfelt	

AGREEMENT

THIS AGREEMENT, made and entered into by and between the **COUNTY OF BREVARD, FLORIDA**, hereinafter called the “County”, by its **BOARD OF COUNTY COMMISSIONERS**, hereinafter called the “Board”, and **FRANK ABBATE**, hereinafter called the “Employee”, both of whom understand as follows:

WITNESSETH:

WHEREAS, the County desires to retain the services of said Employee as the County Manager of Brevard County, Florida, as provided in the Brevard County Charter; and

WHEREAS, it is the desire of the Board of County Commissioners to provide certain benefits, set certain conditions of employment, and to establish a procedure for the termination of employment by the Board and the Employee; and,

WHEREAS, Employee desires to be employed as County Manager of said County;

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

SECTION 1. DUTIES The County herein agrees to employ said Employee as County Manager of said County to perform the functions and duties specified in the Brevard County Charter and other applicable laws and ordinances and to perform such other legally permissible and proper duties and functions as the Board shall from time to time assign.

SECTION 2. TERMS

A. Nothing in the Agreement shall prevent, limit or otherwise interfere with the right of the Board to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3, paragraphs A, B, C and D of this Agreement.

B. Nothing in the Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with the County, subject only to the provision set forth in Section 3, Paragraph E, of this Agreement.

C. Employee agrees to remain in the exclusive employ of the County and will not become employed by another employer until termination is effected as hereinafter provided or as otherwise mutually agreed by both parties.

SECTION 3. TERMINATION AND SEVERANCE PAY

A. **Termination Hearing:** The Board and the Employee understand and agree that the position of County Manager is head of the executive branch of County government for

Brevard County. The Employee must maintain the confidence of the Board and discharge fully and properly the duties of his position. The Employee shall serve at the will and pleasure of the Board. The Board may terminate the Employee at any time for the convenience of the County but only if a majority of the Board agrees. The Board may terminate the Employee for good cause (as defined in paragraph C, below) if in a public meeting, a majority of the Board votes to terminate the Employee; however, the Employee shall then be afforded a written notice setting forth the reasons for termination and the Employee shall have ten (10) days from the receipt of said written notice to request a hearing before the Board of County Commissioners of Brevard County, Florida.

B. Termination for the Convenience of the County: In the event the Employee is either terminated by the Board for the convenience of the County or is forced to resign during such time that Employee is willing and able to perform the duties of County Manager, then and in that event the County agrees to pay Employee a lump sum severance cash payment equal to twenty (20) weeks of compensation. "For the convenience of the County" as used in the Agreement means where the Employee is terminated by the Board without good cause; where a majority of the Board has lost confidence in the Employee performing the duties of his position; where termination of the Employee is in the best interests of the County, as determined solely by the Board; or for any other reason the Board deems appropriate.

C. Termination for Good Cause: In the event the Employee is terminated by the Board for good cause, then and in that event the County shall have no obligation to pay the aggregate severance sum designated in Section 3, paragraph B. "Good Cause" as used *in* this Agreement means insubordination, willful misconduct which is job related or affects job performance, the violation of Section 82-15 of the Code of Ordinances of the Brevard County, Florida or the provisions of Policy XII of the Merit System Policies or nonfeasance, misfeasance or malfeasance in the performance of job duties or the conviction of a crime involving moral turpitude. The standard for good cause for dismissal may be established by measuring the conduct and performance of the Employee against the conduct and performance of other professional County or City Managers considering contemporary standards of employee conduct and performance.

D. In accordance with section 215.425(4)(a)2, Florida Statutes, no severance pay is authorized if the Employee is fired or terminated for misconduct as defined in section 443.036(30), Florida Statutes.

E. Voluntary Resignation: In the event Employee voluntarily resigns his position with the County, the Employee shall give the Board sixty (60) days' notice in advance, unless the parties otherwise agree.

SECTION 4. DISABILITY. If (a) the Employee is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of three (3) months and (b) no reasonable accommodation is possible, to the extent required by state or federal law, the Board shall have the option to terminate this Agreement without payment of the aggregate severance sum designated in Section 3, paragraph B. However; Employee shall be compensated for any accrued sick leave, annual leave, holidays and compensatory time, and shall be entitled to the same disability benefits as extended to other County employees.

SECTION 5. SALARY AND EVALUATION

A. The County agrees to pay Employee for his service rendered pursuant hereto a biweekly salary which computes to \$188,180.98 per annum, commencing July 25, 2017. Annual cost of living increases shall be equal to those percentages as approved by the Board for County employees.

B. The County agrees to permit employee, in his sole discretion before May 1, 2019, the ability to purchase up to a maximum of 20 months of out of state service credit using 100% of the value of the employee's earned and accumulated sick leave time. Such out of state service credit shall be purchased in accordance with F.S. 121.1115.

SECTION 6. ANNUAL AND SICK LEAVE. The Employee's prior service with FRS employers shall be credited towards his years of service with Brevard County when determining the annual and sick leave that he will receive from the County. The Employee will accrue annual and sick leave under the same rules as other career and appointive service employees under the Board generally receive. The Employee must use at least half his newly earned annual leave every year and may carryover the remainder. All accumulated annual leave will be paid to the Employee when he leaves the County. The Employee shall receive the same number of days of sick leave as a

general County employee. The Employee will be reimbursed for prior unused sick leave earned in the same manner as general County employees. For any subsequent sick leave accrual earned after the execution of this Agreement, employee will be reimbursed for unused sick leave in the same manner as employees hired after October 1, 2011, in accordance of Merit System Policy IX.

SECTION 7. AUTOMOBILE ALLOWANCE. The County shall provide a monthly allowance in the sum of Four Hundred Fifty Dollars and No Cents (\$450.00) per month for the Employee's use of his personal vehicle for County business.

SECTION 8. DUES AND SUBSCRIPTIONS. - The County shall pay - dues and subscriptions on behalf of the Employee as are approved in the County's annual budget (on a line item basis) or as authorized separately by the County Commission.

SECTION 9. PROFESSIONAL DEVELOPMENT. The County agrees to pay reasonable and customary travel and subsistence expenses for the Employee's travel to and attendance at the Florida County and County Management Association's annual conference and the Florida Association of Counties annual conference. The County may choose to pay for the Employee's attendance at other seminars, conferences, and committee meetings as it deems appropriate and as are approved by Commission action.

SECTION 10. COUNTY RESIDENCY. The Employee agrees to maintain residence within the corporate limits of the County throughout the term of this Agreement.

SECTION 11. INDEMNIFICATION.

A. County shall defend, save harmless, and indemnify the Employee against any action for any injury or damage suffered as a result of any act, event, or omission of action that the Employee reasonably believes to be in the scope of his duties or function, unless he acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The County may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. The County shall not be liable for the acts or omissions of the Employee committed while acting outside the course and scope of his agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In such instance, the Employee shall reimburse the County for any legal fees and expenses the

County has incurred or otherwise paid, for or on his behalf, in connection with the charged conduct.

B. Said indemnification shall extend beyond the termination of employment and the expiration of this Agreement to provide protection for any such acts undertaken or committed in the Employee's capacity as County Manager, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with the County.

SECTION 12. BONDING. The County agrees to bear the full cost of any fidelity or other bonds required of the Employee as County Manager under any policy, regulation, ordinance or law.

SECTION 13. CODE OF ETHICS. -The "Code of Ethics" promulgated by ICMA is incorporated herein, and by this reference made a part hereof said "Code of Ethics" shall furnish principles to govern the Employee's conduct and actions as County Manager of the County.

SECTION 14. ATTORNEY'S FEES. If any litigation is commenced between the parties concerning any provision of the Agreement or the rights and duties of any person in relation thereto, the party prevailing in such litigation will be entitled, in addition to such other relief as may be granted, to reasonable attorney's fees and expenses incurred in connection therewith, including appellate fees and expenses.

SECTION 15. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

A. The Board shall fix any other terms of employment as it may determine desirable from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the laws of Florida, or any other applicable law.

B. In addition to benefits specifically enumerated herein for the benefit of the Employee, all provisions of law and regulations and rules of County relating to annual and sick leave, life insurance, disability benefits, retirement and pension system contributions, holidays and other fringe benefits as they now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of County, except as otherwise provided for herein.

SECTION 16. GENERAL PROVISION.

- A. The text herein shall constitute the entire Agreement between the parties.
- B. The Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- C. The Agreement shall be effective -execution of this agreement by the parties.
- D. Florida Law shall govern this Agreement and any litigation that may arise from this Agreement, shall be filed and litigated in Brevard County, Florida.
- E. 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, shall not be affected, and shall remain in full force and effect.

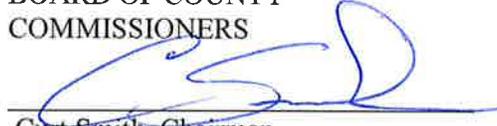
IT WITNESS WHEREOF, the parties have caused this Agreement to be duly executed this 22 day of Aug., 2017.

ATTEST:



Scott Ellis, Clerk of Court

COUNTY OF BREVARD, FLORIDA
BOARD OF COUNTY
COMMISSIONERS



Curt Smith, Chairman

As approved by the Board on 8/22/17



Frank Abbate DATE