

EMPLOYMENT AGREEMENT

This Employment Agreement (the “Agreement”) is entered into as of this 20th day of September, 2023, by and between the **CITY OF CAPE CORAL**, a municipal corporation organized and existing under the laws of the State of Florida (the “City”) and **MICHAEL ILCZYSZYN** (The “Employee” or “Ilczyszyn”) (each, a “Party” and collectively, the “Parties”).

WHEREAS, on September 6, 2023, the Mayor and City Council selected Ilczyszyn as City Manager of the City, pending contract negotiations; and

WHEREAS, The City, acting by and through its City Council desires to employ Ilczyszyn as its City Manager on the terms and conditions set forth in this Agreement, and Ilczyszyn desires to be employed as the City Manager on those same terms and conditions.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Recitations. The Parties agree that the recitations above are true and correct and are incorporated as if fully set forth here.
2. The City agrees to employ Ilczyszyn as its City Manager and Ilczyszyn agrees to be so employed. Ilczyszyn will devote his full working time to these duties as City Manager and will not accept or perform any other employment, paid or unpaid, while he is employed as City Manager, except as expressly set forth herein or expressly agreed to by the City Council.

SECTION 1 - EFFECTIVE DATE AND TERM

This Agreement shall have an initial term of four (4) years, commencing on September 20, 2023 (herein identified as the “Commencement Date” or “Employment Date”), and expiring at midnight on September 19, 2027. Thereafter, this Agreement shall be automatically renewed for successive two (2) year terms unless either party gives notice of non-renewal at least 120 days before the expiration of the current term. The Parties may, as deemed appropriate and necessary, modify the provisions of this Agreement during the initial term or renewal years.

SECTION 2 - CITY MANAGER DUTIES

The City shall employ Ilczyszyn as City Manager to perform the functions and duties specified in the City's Charter (Section 5.04), Code of Ordinances, and any other legally permissible and proper duties and functions as assigned by the City Council. The Employee shall devote his full time and attention on behalf of the City, and shall not engage in any other employment outside of his responsibilities as an employee of the City. The City shall have the power to determine the duties and responsibilities to be assigned to the Employee by the City Council. The Employee reports directly to the City Council, and will be directly responsible to the City Council throughout the term of this Agreement.

SECTION 3 - ETHICS OF EMPLOYEE

The Employee shall be subject to the Florida Statutes, Chapter 112, Part III, Code of Ethics for Public Officers and Employees, and any established City Policies, and any other acceptable, appropriate and required standard(s) for City Managers in the State of Florida throughout the term of this Agreement. Additionally, the Employee shall be held to those ethical obligations set forth by the ICMA Code of Ethics with Guidelines in effect throughout the term of this Agreement, including any amendments or automatic extensions promulgated herein.

SECTION 4 - COMPENSATION

The City shall provide compensation to the Employee for performing the duties and services of City Manager pursuant to this Agreement, which compensation shall be an annual base salary of \$285,000. The base salary set forth herein shall retroactively revert to, and be applied as of February 17, 2023, which date correlates directly to Ilczyszyn being named Interim City Manager. The Employee will be entitled to receive the retroactive base salary amount within 30 days after the Commencement Date.

This base salary shall likewise be paid in equal installments according to the usual payroll practices of the City for its employees. After 12 months from the date of this Agreement, and every 12 months thereafter, City Council shall review the Employee's performance. The Employee will be entitled to receive an increase, if any, which the City Council authorizes for other non-bargaining employees of the City, in the same manner and at the same time as other general (non-bargaining) employees of the City.

4.1 Insurance. The City shall pay the full amount of premiums for the City-offered group medical plan selected by Ilczyszyn, and Ilczyszyn may include other eligible dependents, provided that such other eligible dependents premiums are paid by the Employee consistent with other general employees of the City. Ilczyszyn and his dependents will be able to participate in any dental or vision insurance of the City, which insurance group rates will be paid consistent with other general employees of the City. The City will pay the full amount of premiums for the City-offered life insurance policy. Ilczyszyn may (or, if participation is mandatory, shall) participate in other City-offered insurance and benefits for which he is eligible on the terms applicable to other general employees of the City.

4.2 Leave. Ilczyszyn shall be entitled to continue accruing annual leave consistent with, and pursuant to, the leave accrual table and/or schedule set forth within Chapter 2, Article III, Division 11 of the City Code, and, thereafter; Ilczyszyn shall continue to accrue annual leave as provided for other general employees of the City. The City acknowledges and affirms that Ilczyszyn will not be obliged to utilize his accrued annual leave hours pursuant to Section 2-35.5(b) of the City Code, and that Ilczyszyn will be entitled to be paid for any accrued annual leave time that is in excess of the maximum number of hours authorized to be carried over to the next fiscal year.

4.3 Residency. Ilczyszyn has established residency within the City of Cape Coral, Florida, and has agreed to maintain that residency within the territorial limits of the City of Cape Coral, Florida throughout the initial term and renewal years of this Agreement.

**SECTION 5 - N O N - C O M P E N S A T I O N
BENEFITS, EXPENSES AND REIMBURSEMENTS**

The City shall provide the Employee those non-compensation benefits, expenses, and reimbursements now or hereafter provided to other general regular non-bargaining City employees, including, but not limited to, paid holidays, annual leave, health insurance, life insurance, and disability insurance. The City will pay for, reimburse, or otherwise provide for the items set forth in this Section 5. These items are paid for, reimbursed, or otherwise provided because they inure to the benefit of the City, and do not constitute compensation, wages, salary, earnings, or remuneration to Ilczyszyn for any purpose whatsoever.

5.1 Information and Communication Technology Expenses. The City will provide Ilczyszyn with adequate and reasonable information and communications hardware, software, and services to support him in the performance of his duties as the City Manager, which expenses shall be pursuant to the approved budget for the Office of the City Manager.

5.2 Subscriptions, Memberships, and Fees. Ilczyszyn may include, as an expense item in the budget of the Office of the City Manager, an amount to be used to pay for such reasonable subscriptions, memberships, and fees and other similar costs, such as travel and lodging, as may be incurred for development and advancement related to, in support of, and inuring to the benefit of the City.

5.3 The Employee shall be enrolled in the City of Cape Coral Defined Contribution Plan for Management Employees. The City shall pay into the plan a sum equal to the percentage of salary contributed for other general regular non-bargaining employees participating in the Plan. The Employee shall be responsible for an amount equal to the percentage of salary contributed by other general regular non-bargaining employees.

5.4 Mobile Telephone Allowance. Same as other general (non-bargaining) employees of the City.

5.5 Vehicle Allowance. The City shall pay the Employee a vehicle allowance in the amount of \$600.00 per month.

SECTION 7 - OTHER EXPENSES

A. The City shall pay all other reasonable business expenses of the Employee in accordance with the City's general policies, including but not limited to, membership dues required or recommended by ICMA and the Florida City/County Management Association (FCCMA). Additionally, the City shall pay or reimburse the Employee for those matters that have not been specifically set forth or identified within Section 5, herein:

7.1 Reasonable professional dues and subscriptions.

7.2 Educational expenses incurred to maintain or improve Employee's professional skills and expenses for travel, room, and meals while attending professional conferences, workshops, conventions, and seminars. All reimbursements will be provided and governed by existing city policies.

7.3 The cost of any fidelity or other bonds that are, or may be required of, the Employee while performing the duties of this position.

7.4 Any other expenses approved by the City Council.

B. Expenses shall not exceed the amount approved by City Council in the annual budget.

SECTION 8 - TERMINATION

A. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate this Agreement with or without cause at any time. In the event of termination without cause by the City Council, which shall include but not be limited to a request from the City Council that Employee resigns, Employee shall receive four (4) months base salary as severance pay in a lump-sum payment. No portion of the severance pay shall be included in the salary for the purpose of calculating payments to a defined contribution plan. In exchange for the severance, the Employee waives any rights under the City Charter or the City Code pertaining to a termination without cause, including, but not limited to, a preliminary resolution notice and hearing.

B. If an indictment information, or similar document charges the Employee with a felony, misdemeanor, or a crime involving moral turpitude, driving under the influence while on City business, or unlawful possession of a controlled substance, the City Council, in its sole discretion, may suspend the Employee without pay or benefits pending disposition of the charges. Upon a conviction of any such charge, regardless of whether adjudication is withheld, at the sole option of the City Council, the Employee may be terminated without benefits or severance pay. Employee hereby waives any rights under the City Charter or City Code regarding such termination, including, but not limited to, preliminary resolution notice and hearing. Upon the dismissal of such charges or upon the Employee being acquitted or found not guilty of same, the

Employee will be immediately reinstated and entitled to full back pay and all other accrued benefits.

C. When deemed necessary or appropriate by the City Council, the Employee may be suspended from his duties with pay until the matters that gave rise to the suspension are resolved to the satisfaction of the Council. Employee waives any rights under the City Charter due to any such suspension.

D. In addition to the provision of paragraph B of this Section, this Agreement may be terminated by the City Council for cause, as provided herein. Cause shall be defined for the purposes of this Agreement to include, but not be limited to:

1. A disregard for the standards of professional conduct expected of a City Manager, including, but not limited to, the requirements found in Florida Statutes referenced in Section 3 of this Agreement.
2. A finding of a violation of the City Charter, the City Code or the ICMA Code of Ethics.
3. A material breach of any of the Employee's obligations under this Agreement.
4. Conduct or actions, either professionally or personally, that would adversely reflect upon the Employee's competency to perform the duties of the City Manager or to maintain public confidence in City Government; or
5. Neglect of duties or insubordination.

E. If the Employee is terminated for cause pursuant to paragraphs B and/or D, the city will have no obligation to pay severance pay or post-termination benefits as outlined in this Agreement.

F. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Employee to resign at any time from his position; however, he shall give the City written notice at least Ninety (90) days before the effective date of such resignation, unless this notice requirement is waived in writing by the City.

If the City Council terminates Employee for cause pursuant to paragraph D of this Section, the termination shall be in accordance with the notice and hearing requirements outlined in the City Charter.

G. Upon any termination of this Agreement, including, but not limited to resignation by the Employee, the Employee shall be entitled to payment for accrued but unused annual leave.

SECTION 9 - INDEMNIFICATION

A. To the extent allowed by law, the City shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim, demand, criminal or ethical complaint, or any other legal action arising from any act, either alleged or actual, or omission, which may occur within the scope of Employee's employment and performance of the Employee's duties as City Manager provided, however, that said the complaint is successfully defended against. The City may compromise and settle any claim or suit and pay the amount of any settlement or judgment rendered thereon, together with attorney's fees associated therewith, if any.

B. In the event it is determined by a court of competent jurisdiction that such claim or complaint resulted from willful malfeasance or criminal misconduct by Employee, or in the event the Employee enters a plea of nolo contendere regardless of whether adjudication is withheld, the complaint or claim shall be deemed to have been not successfully defended against, and this indemnification shall not be applicable. Furthermore, if the City has expended funds for the defense of the employee against any complaint or claim that is not successfully defended, the employee shall be responsible for reimbursing the City for all such costs and fees expended by the City.

SECTION 10 - MISCELLANEOUS PROVISIONS

A. This Agreement shall be construed and enforced pursuant to the laws of the State of Florida. For any litigation involving this Agreement, the parties agree to a venue in Lee County, Florida.

B. This Agreement constitutes the entire Agreement between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement in the City of Cape Coral, Lee County, Florida, on the day and year first written above.

CITY OF CAPE CORAL

EMPLOYEE

By: _____
JOHN GUNTER, MAYOR

MICHAEL ILCZYSZYN

ATTEST: _____
KIMBERLY BRUNS, CITY CLERK