



City of Atlantic Beach  
**Amended Agenda**  
**Special Called Meeting of the City Commission**

Tuesday, August 22, 2023 - 5:30 p.m.

Commission Chamber

City Hall, 800 Seminole Road,

Atlantic Beach, FL 32233

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**INVOCATION AND PLEDGE OF ALLEGIANCE**

Page(s)

**1. CALL TO ORDER AND ROLL CALL**

**2. PUBLIC COMMENT**

**3. ACTION ON RESOLUTIONS**

\* 3.A. **Resolution No. 23-34**

3 - 16

A RESOLUTION OF THE CITY OF ATLANTIC BEACH, FLORIDA, APPOINTING BILL KILLINGSWORTH AS CITY MANAGER AND AUTHORIZING THE EXECUTION OF AN EMPLOYMENT AGREEMENT DESIGNATING HIM AS SUCH EFFECTIVE SEPTEMBER \_\_\_\_, 2023; AUTHORIZING THE MAYOR TO EXECUTE THE DOCUMENTS NECESSARY, INCLUDING BUT NOT LIMITED TO AN EMPLOYMENT AGREEMENT, TO EFFECTUATE THE EMPLOYMENT OF BILL KILLINGSWORTH TO SERVE AS CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.

[Resolution No. 23-34](#)

**4. ADJOURNMENT**

This meeting will be live-streamed and videotaped. To access live or recorded videos, click on the [Meeting Videos tab](#) on the city's home page at [www.coab.us](http://www.coab.us).

If any person decides to appeal any decision made by the City Commission with respect to any matter considered at any meeting, such person may need a record of the proceedings, and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record shall include the testimony and evidence upon which the appeal is to be based.

Any person wishing to speak to the City Commission on any matter at this meeting should submit a request to the City Clerk prior to the meeting. For your convenience, forms for this purpose are available at the entrance to the Commission Chamber.

Every effort is made to indicate what action the City Commission is expected to take on each agenda item. However, the City Commission may act upon any agenda subject, regardless of how the matter is stated on the agenda.

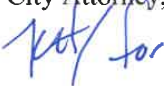
In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should

Special Called Meeting of the City Commission - 22 Aug 2023

contact the City Clerk's Office at (904) 247-5821 or at City Hall, 800 Seminole Road, Atlantic Beach, FL 32233, no later than 5:00 PM on the Friday prior to the meeting.

**CITY OF ATLANTIC BEACH  
CITY COMMISSION MEETING  
STAFF REPORT**

**AGENDA ITEM:** Resolution No. 23-34 appointing Bill Killingsworth as City Manager

**SUBMITTED BY:** Joe Gerrity, Interim City Manager; Jason Gabriel, City Attorney; and Cathy Varian, Director of Human Resources 

**TODAY'S DATE:** August 21, 2023

**MEETING DATE:** August 22, 2023


**BACKGROUND:** On August 14, 2023, the City Commission agreed by consensus to have Mayor Curtis Ford, Interim City Manager Joe Gerrity, City Attorney Jason Gabriel and Human Resources Director Cathy Varian collaborate and come to terms with Bill Killingsworth to serve as City Manager. That work is complete and the resulting draft employment agreement and corresponding Resolution (No. 23-34) are being presented to the City Commission for consideration.

This amended agenda is being published because the employment agreement has been modified since the original meeting agenda was published on Aug. 17. The amended employment agreement is attached.

**BUDGET:** \$218,500 plus benefits

**RECOMMENDATION:** Consider approving Resolution No. 23-34 and the attached employment agreement

**ATTACHMENTS:** Resolution No. 23-34  
Employment Agreement for City Manager Services

**REVIEWED BY CITY MANAGER:** 

**RESOLUTION NO. 23-34**

**A RESOLUTION OF THE CITY OF ATLANTIC BEACH, FLORIDA, APPOINTING BILL KILLINGSWORTH AS CITY MANAGER AND AUTHORIZING THE EXECUTION OF AN EMPLOYMENT AGREEMENT DESIGNATING HIM AS SUCH EFFECTIVE SEPTEMBER \_\_\_\_, 2023; AUTHORIZING THE MAYOR TO EXECUTE THE DOCUMENTS NECESSARY, INCLUDING BUT NOT LIMITED TO AN EMPLOYMENT AGREEMENT, TO EFFECTUATE THE EMPLOYMENT OF BILL KILLINGSWORTH TO SERVE AS CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on August 14, 2023, the City Commission agreed by consensus to have Mayor Curtis Ford, Interim City Manager Joe Gerrity, City Attorney Jason Gabriel and Human Resources Director Cathy Varian collaborate and come to terms with Bill Killingsworth to serve as City Manager; and

**WHEREAS**, that work is complete it is the desire of the City Commission to enter into the attached employment agreement appointing and designating Mr. Killingsworth as City Manager, effective September \_\_\_\_, 2023.

**NOW THEREFORE**, be it resolved by the City Commission of the City of Atlantic Beach as follows:

**SECTION 1.** Pursuant to Section 21 and Section 10 of the City Charter, the City Commission hereby approves the attached employment agreement designating Bill Killingsworth as City Manager.

**SECTION 2.** The City Commission hereby authorizes the Mayor to execute the employment agreement and any documents necessary to effectuate the employment of Mr. Killingsworth to serve as City Manager.

**SECTION 3.** This Resolution shall take effect immediately upon its passage and adoption.

**PASSED AND ADOPTED** by the City of Atlantic Beach, this 22<sup>nd</sup> day of August, 2023.

\_\_\_\_\_  
Curtis Ford, Mayor

Attest:

Approved as to form and correctness:

\_\_\_\_\_  
Donna L. Bartle, City Clerk

\_\_\_\_\_  
Jason Gabriel, City Attorney

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (hereinafter referred to as the “Agreement”) is by and between the City of Atlantic Beach, a municipal corporation (hereinafter referred to as the “City”), and William Killingsworth (hereinafter referred to as “Killingsworth” or as “City Manager”), an individual who has the education, training and experience in local government management and meets all of the qualification requirements of the City Charter including but not limited to Section 22.

### WITNESSETH:

WHEREAS, the City desires to employ Killingsworth as City Manager of the City of Atlantic Beach, Florida, as provided for in Section 10 of the City Charter of the City of Atlantic Beach; and

WHEREAS, the City, through its City Commission, desires to provide for certain benefits and compensation for the City Manager and to establish conditions of employment applicable to the City Manager; and

WHEREAS, Killingsworth desires to accept employment as City Manager of the City of Atlantic Beach under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises as set forth in this Agreement, the parties agree as follows:

#### **Section 1. Term.**

This Agreement shall remain in full force and effect from the date the last party has executed the agreement until terminated by the City or by the City Manager as provided herein. City Manager shall begin employment no later than September \_\_\_\_, 2023.

#### **Section 2. Duties and Authority**

A. The City of Atlantic Beach agrees to employ Killingsworth as its City Manager to perform the duties and functions specified in the City’s Charter and Code (including but not limited to Article III, City Charter) and to perform other legally permissible and proper duties and functions as the City Commission shall from time to time assign.

B. The City Manager is the chief executive officer of the City and shall faithfully perform the duties as prescribed in the job description as set forth in the City’s charter and/or ordinances and as may be lawfully assigned by the City and shall comply with all lawful Commission directives, state and federal law, City policies, rules and ordinances as they exist or may hereafter be amended.

C. Specifically, it shall be the duty of the City Manager to employ on behalf of the City all other employees of the organization consistent with the policies of the governing body and the ordinances and charter of the City.

D. It shall also be the duty of the City Manager to direct, assign, reassign and evaluate all of the employees of the City consistent with policies, ordinances, charter, state and federal law.

E. It shall also be the duty of the City Manager to organize, reorganize and arrange the staff of the City and to develop and establish internal regulations, rules and procedures which the City Manager deems necessary for the efficient and effective operation of the City consistent with the lawful directives, policies, ordinances, state and federal law.

F. It shall also be the duty of the City Manager to accept all resignations of employees of the City consistent with the policies, ordinances, state and federal law, except the City Manager's resignation, which must be accepted by the Commission.

G. The City Manager shall perform the duties of City Manager of Atlantic Beach with reasonable care, diligence, skill and expertise.

H. All duties assigned to the City Manager by the Commission shall be appropriate to and consistent with the professional role and responsibility of the City Manager.

I. The City Manager cannot be reassigned from the position to another position without the Commission's express, written consent and approval.

J. The City Manager or designee shall attend and shall be permitted to attend, all meetings of the Commission.

K. The Commission, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints and suggestions called to their attention to the City Manager for study and/or appropriate action.

**Section 3. Compensation**

A. The City agrees to pay the City Manager an annual base salary of \$218,500.00 (the "Salary") payable in installments at the same time as other City employees are paid.

B. Cost of Living Adjustments (COLA). The City Manager shall receive the same COLA increases provided to all other City general employees.

C. The City may increase said Salary and/or other benefits of the City Manager in such amounts and to such an extent as the City Commission may determine desirable. This Agreement shall be automatically amended to reflect any Salary and benefit adjustments that are provided to the City Manager by the Commission. The term "Salary" as used herein shall refer to the base

salary as adjusted by COLA and as other adjustments by the City Commission at the applicable time.

D. Annually, and in compliance with the provisions of applicable law, the City Commission and City Manager shall define such goals and performance objectives that they determine necessary for the proper operation of the City and in the attainment of the City Commission's policy objectives. Said goals and objectives shall be generally attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

#### **Section 4. Health, Disability and Life Insurance Benefits**

A. The City agrees to provide and to pay the premiums for vision, dental and comprehensive medical insurance for the City Manager and his/her dependents, at the mid-level plan offered to other full-time City employees. The City Manager may elect to upgrade to a higher plan, but shall pay the cost differential.

B. The City agrees to put into force and to make required premium payments for short term and long-term disability coverage for the City Manager.

C. The City shall pay the amount of premium for term life insurance in the amount of \$50,000. The City Manager shall name the beneficiary of the life insurance policy.

D. The City shall reimburse the City Manager for City Manager's cost expended in his enrollment in the Consolidated Omnibus Budget Reconciliation Act (COBRA) program until such time as the City Manager and his dependents are fully enrolled in the comprehensive medical insurance program as set forth in this Section 4.

#### **Section 5. Personal Leave**

A. Upon commencing employment the City Manager shall be credited with 120 hours of personal leave. In addition, beginning the first day of employment, the City Manager shall accrue personal leave at the rate for employees under the same rules and provisions applicable to other general employees.

B. The City Manager is entitled to accrue all unused leave, up to 680 hours, and in the event the his/her employment is terminated, without cause, the City Manager shall be compensated for of all accrued personal leave up to 340 hours.

#### **Section 6. Automobile Allowance; Cell Phone**

A. The City agrees to pay to the City Manager, during the term of this Agreement and in addition to the Salary and benefits herein provided, the sum of \$500 per month, payable

monthly, as a vehicle allowance to be used to purchase, lease or own, operate and maintain a vehicle. The City Manager shall be responsible for paying for liability, property damage and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair and regular maintenance of said vehicle, including gasoline. The City shall reimburse the City Manager at the IRS standard mileage rate for any business use of the vehicle beyond 100 miles of the City limit.

B. The City shall provide the City Manager with a city-issued cell phone. Any information received or retained on the city-issued cell phone shall be a public record. The City agrees to indemnify and hold City Manager harmless and bare the cost of defense for any legal claim under any public records law for any information received or retained on the city-issued cell phone.

#### **Section 7. Retirement**

The City agrees to pay, on an annual basis, an amount equal to ten percent (10%) of the City Manager's Salary to a Mission Square 401k account, as designated by the City Manager. The City's contribution shall not exceed the limits established by federal statute and/or regulation. Such payments for City Manager's retirement will be in lieu of any such payments which the City would have otherwise made on behalf of City Manager to the City's defined contribution pension plan.

The City Manager may participate in any optional supplemental retirement plan offered to employees.

#### **Section 8. Professional Development**

A. The City agrees to pay the City Manager's professional dues for membership in the ICMA, Florida League of Cities and the Florida City and County Management Association. The City agrees to pay the costs associated with maintaining the City Manager's planning certification (AICP), including continuing education requirements. The City may pay other professional dues and subscriptions on behalf of the City Manager as are approved in the City's annual budget (on a line item basis) or as authorized separately by the City Commission.

B. The City agrees to pay reasonable and customary travel and subsistence expenses for the City Manager's travel to and attendance at professional and official travel, meetings and occasions to adequately continue the professional development of the City Manager, including but not limited to the ICMA's annual conference, the Florida City and County Management Association's annual conference, the Florida League of Cities' annual conference or other similar professional development training opportunities, provided the associated expenses do not exceed the allocated appropriation in the City's annual budget.

#### **Section 9. Community Involvement**



The City recognizes the desirability of representation in and before local civic and other organizations, and encourages the City Manager to participate in these organizations to foster a continuing awareness of the City's activities as well as the community's attitudes and ideas. The City may pay dues or membership fees toward local civic organization(s) on behalf of the City Manager as are approved in the City's annual budget (on a line item basis) or as authorized separately by the City Commission.

**Section 10. Holidays**

The City Manager is entitled to the same paid holidays as the general City staff.

**Section 11. Termination by the City and Severance Pay**

A. The City Manager shall serve at the pleasure of the City Commission, and the City Commission may terminate this Agreement and the City Manager's employment with the City at any time, for any reason, or for no reason.

B. Should a majority of the entire Commission vote to terminate the services of the City Manager "without cause", then within ten (10) business days following such vote, the Commission shall cause the City Manager to be paid any accrued and unpaid Salary and benefits earned as of the date of the vote to terminate (including personal leave but excluding such items and allowances as are used in conducting City business such as, but not limited to, the use of the automobile allowance). Within forty-five (45) calendar days following the vote to terminate the City Manager's employment "without cause", the Commission shall cause the City Manager to be paid a lump sum severance pay equal to 20 weeks of his Salary as full and complete payment and satisfaction of any claims of the City Manager of whatsoever nature arising out of this Agreement or otherwise. As consideration for such payment, the City Manager shall, prior to receipt thereof, execute and deliver to the City a general release of the City and its Commission members and its officers, agents, and employees for all acts and actions from the beginning of time until the date of release, in substantially the form which is attached hereto and made a part hereof as Appendix 1. Any severance pay paid under this Section shall be in accordance with, and subject to the limits of, Section 215.425, Florida Statutes.

C. In the event the City Manager is terminated "for cause," the City shall have no obligation to pay the amounts outlined in Section 11, paragraph B of this Agreement, except for accrued and unpaid Salary and benefits earned as of the date of the vote to terminate with cause, and shall have no obligation to provide the general release attached as Appendix 1. For purposes of this Agreement, "for cause" is defined and limited for purposes of this Agreement to any of the following:

1. Conviction or a plea of guilty or no contest to a felony crime, or a crime involving a breach of public trust, whether or not adjudication is withheld;
2. Repeated violation of any City policy, rule, or regulation following notice of the initial violation;

3. Any intentional act involving moral turpitude causing substantial disrepute to the City; or
4. "Misconduct," as defined in Section 443.036(30), Florida Statutes.

**Section 12. Termination by the City Manager**

A. The City Manager may terminate this Agreement or voluntarily resign at any time by delivering to the City Commission a written notice of termination or voluntary resignation a minimum of forty-five (45) days prior to the effective date of the termination or resignation. In its sole discretion, the City may waive, or shorten, the forty-five (45) day notice period by a majority vote of the entire Commission (three members).

B. If the City Manager terminates this Agreement or voluntarily resigns after providing the written notice required in Section 12(A), then the provisions of Section 11(B) above, shall not apply. If the City Manager terminates this Agreement or voluntarily resigns after providing the written notice required in Section 12(A), the City shall pay to the City Manager any accrued personal leave. Other than paying the City Manager any accrued compensation that he has earned as of the date of his termination, the City shall have no further financial obligation to City Manager pursuant to this Agreement, unless the City Commission by a majority vote of the entire Commission (three members) agrees to provide any other consideration. In such event, and as consideration of said approval, the City Manager shall execute and deliver to the City the general release as referenced in Section 11 B hereof.

C. If the City Manager terminates this Agreement or voluntarily resigns without providing the notice required in Section 12(A) herein, the City shall not pay to the City Manager any accrued personal leave. Other than paying the City Manager any accrued compensation that he has earned as of the date of his termination, the City shall have no further financial obligation to City Manager pursuant to this Agreement.

**Section 13. Residency Requirement**

The City Manager agrees that he will reside within the City as a condition of his employment as City Manager and agrees to move to the City of Atlantic Beach, as his/her residence, within six months of the date of this Agreement.

**Section 14. Indemnification.**

A. Subject to the limitations set forth in Section 768.28, Florida Statutes, and without waiving the sovereign immunity of the City, the City shall defend, hold harmless, and indemnify the City Manager against any action for any injury or damage suffered as a result of any act, event, or omission of action committed by the City Manager within the scope of his employment hereunder, provided that the City Manager timely reports the same to the City Commission and cooperates fully and honestly in the City's defense thereof. The City may compromise and settle

any such claim or suit and pay the amount of any settlement or judgment rendered thereon. The provisions of this Section shall not apply to any claim, demand, suit or cause brought or asserted against the City Manager for his acts or omissions committed while acting outside the course and scope of his employment under this Agreement, committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, property or civil rights. In such instance, the City shall be under no affirmative obligation to indemnify or defend the City Manager and the City Manager shall be solely responsible for all costs associated with his legal defense and any settlement(s) or judgment(s) rendered 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 his capacity with the City as City Manager, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with the City.

**Section 16. Bonding**

The City agrees to bear the full cost of any fidelity or other bonds required of the City Manager under any policy, regulation, ordinance or law.

**Section 17. Code of Ethics**

The "Code of Ethics" promulgated by the ICMA, as may from time to time be amended, is incorporated herein, and by this reference made a part hereof. Said "Code of Ethics" shall furnish principles to govern the City Manager's conduct and actions as City Manager of the City.

**Section 18. General Terms and Conditions**

A. This Agreement sets forth and establishes the entire understanding between the City and the City Manager relating to the employment of the City Manager by the City. Any prior discussions or representations by or between the City and the City Manager are merged into and rendered null and void by this Agreement. The City and the City Manager by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this Agreement.

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

C. This Agreement shall become effective on the last date signed by the parties.

D. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been

executed by both the City and City Manager subsequent to the expungement or judicial modification of the invalid provision.

E. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no court construing this Agreement shall construe it more strictly against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.

F. A default shall consist of the breach or anticipatory breach of any covenant, agreement, representation, provision or warranty contained within this Agreement. If a default, breach or anticipatory breach occurs, the party not in default may, at any time or from time to time, pursue to enforce its remedies under this Agreement by suit in equity, action at law or by any other appropriate proceeding, for damages or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations; provided, however, the parties shall, prior to initiating any court proceedings, initiate and complete mediation with a Florida Supreme Court certified mediator in accordance with the procedures set forth in Section 44.102, Florida Statutes, with costs to be equally shared.

G. This Agreement and the rights, obligations and remedies hereunder shall be interpreted and governed in all respects by the laws of the State of Florida. Any suit, action or other legal proceeding arising out of or relating to this Agreement shall be brought in courts of competent jurisdiction in and for Duval County, Florida.

Executed by the City of Atlantic Beach, Florida this \_\_\_\_ day of \_\_\_\_\_ 2023.

CITY OF ATLANTIC BEACH, FLORIDA

By: \_\_\_\_\_  
Curtis Ford, Mayor

ATTEST:

\_\_\_\_\_  
Donna Bartle, City Clerk

Executed by the CITY MANAGER this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
William Killingsworth

**APPENDIX 1**

**SEPARATION OF EMPLOYMENT AND GENERAL RELEASE AND WAIVER**

This Separation of Employment and General Release and Waiver Agreement (Agreement) is made by and between the City of Atlantic Beach (City) and Killingsworth (City Manager).

**WHEREAS**, City has employed City Manager; however the parties wish to enter into a voluntary agreement to terminate their employment relationship and to resolve any actual or potential claims that either party may have against the other by reason of City Manager's employment or termination thereof.

**WHEREAS**, the parties desire to set forth the terms and conditions governing City Manager's separation of employment and to provide for the settlement and release of any and all disputes or controversies that have arisen, or which may hereafter arise, between City and City Manager, including without limitation, any and all claims arising out of or in any way related to City Manager's employment with or separation from the City.

**NOW THEREFORE**, in consideration of the mutual covenants herein contained and the mutual benefits to be derived therefrom, the sufficiency of which consideration is hereby acknowledged by the undersigned, City and City Manager agree and state:

**1. TERMINATION OF EMPLOYMENT**

Upon their mutual agreement, City Manager's employment with City shall terminate on \_\_\_\_\_, 20\_\_, which shall be (was) City Manager's final date of employment.

**2. NO ADMISSION OF LIABILITY**

This Agreement is not an admission by City Manager or City of any wrongful conduct whatsoever. Both parties deny and disclaim any liability to or wrongful conduct against the other or any third party.

**3. PAYMENT AND BENEFITS**

City Manager shall receive his/her last regular paycheck at the regular scheduled payroll date. Within ten days of this Agreement, City Manager shall receive an additional payment to compensate for accumulated personal leave, subject to customary payroll deductions.

As consideration for this Agreement and the release contained within, and in full and complete satisfaction of all obligations due and owing City Manager, City shall: Pay City Manager an amount equal to twenty (20) weeks of his current Salary, subject to customary payroll deductions.

**4. SURRENDER AND VACATION OF EMPLOYER'S PROPERTY**

Upon execution of this Agreement, City Manager shall deliver all of City's property in his/her possession and further, shall vacate City's property.

**5. RELEASE AND WAIVER OF CLAIMS**

In consideration of the benefits to be provided to City Manager pursuant to this Agreement, City Manager hereby irrevocably and unconditionally releases, waives, acquits and discharges the City and each of its past, present and future elected officials, department heads, officers, employees, agents, representatives and attorneys from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether known or unknown, Including specifically claims under the Age Discrimination in Employment Act of 1967, arising out of any act, omission, or event from the beginning of time up to the execution of this agreement.

City hereby irrevocably and unconditionally releases, acquits and discharges City Manager from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether known or unknown, arising out of any act, omission, or event from the beginning of time up to the execution of this Agreement.

**6. REFERENCES AND NON-DISPARAGEMENT**

If it is necessary for City to provide a reference to a prospective employer, City Manager agrees that he will direct the prospective employer to contact the Director of Human Resources at the City of Atlantic Beach. Additionally, City Manager and the elected officials agree that they shall not disparage or make untrue statements about each other; provided that this Section shall not apply to comments made to any other governmental entity or as required by law.

**7. REPRESENTATIONS AND WARRANTIES**

The undersigned parties hereby represent and warrant the following to the other:

- a. City Manager represents and warrants that: he/she is legally and mentally competent to sign this Agreement; he/she is the sole owner of any claims against the City; he/she has the requisite capacity and authority to make this Agreement, and no portion of any existing or potential claims has been sold, assigned or pledged to any third party; and he/she presently possesses the exclusive right to receive all of the consideration paid in exchange for this Agreement.
- b. City Manager represents and warrants that he/she has not and will not file any complaints, charges or lawsuits against City or any of its past, present and future elected officials, department heads, officers, employees, agents, representatives or attorneys with any governmental agency or any court, including without limitation, any claim or matter of any nature whatsoever related to or arising out of his employment with or separation of his/her employment, except City Manager expressly reserves the right to file a claim for unemployment benefits. City Manager further agrees to indemnify and hold City harmless from any and all loss, costs, damages or expenses, including reasonable attorney fees incurred by City, arising out of any claim that may hereafter be made by City Manager or any other party.

- c. City represents and warrants that it has not and will not file any complaints, charges or lawsuits against City Manager with any governmental agency or any court, including without limitation, any claim or matter of any nature whatsoever related to or arising out of City Manager's employment with or separation of his/her employment with City.
- d. Each party is fully aware of the contents of this Agreement and of its legal effect and understands that it should obtain legal advice regarding this Agreement as they deem appropriate. The parties hereto and each of them, have carefully read this Agreement and know the contents thereof, and they signed the same freely and voluntarily.
- e. This Agreement sets forth the entire agreement between the parties and supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision of this Agreement or of any succeeding breach of the same provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach. If any provision in this Agreement is found to be unenforceable, all other provisions will remain fully enforceable.
- f. No promise or inducement has been made or offered, except as herein expressly set forth, and this Agreement is executed without reliance upon any statement or representation by any of the released parties or their representatives.
- g. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.
- h. This Agreement and any amendments hereto may be executed in multiple counterparts by the parties, or copied. Each counterpart or copy shall be deemed an original, but all counterparts together shall constitute one and the same instrument.

**8. JURISDICTION**

This Agreement shall be governed by the laws of the State of Florida, and venue shall be in Duval County, Florida.

**9. BINDING EFFECT**

This Agreement shall be binding upon and shall accrue to the benefit of the parties hereto, their respective heirs, personal representatives, successors in interest and assigns.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the respective dates set forth below and each hereby acknowledges receipt of an executed copy of this Agreement.

On behalf of the City of Atlantic Beach, Florida:

\_\_\_\_\_  
Curtis Ford, Mayor

\_\_\_\_\_  
Date

City Manager

\_\_\_\_\_  
William Killingsworth

\_\_\_\_\_  
Date