

## EMPLOYMENT CONTRACT

THIS EMPLOYMENT CONTRACT ("Contract"), entered into on September , 2012, is by and between the City of Fort Lauderdale, Florida, a Florida municipality ("Employer"), and John C. Herbst, an individual, ("Employee").

WHEREAS, pursuant to Ordinance No. C-04-37, adopted July 26, 2004, which implemented an amendment to the Charter of the City of Fort Lauderdale, Florida, the City Commission has selected John C. Herbst to serve as the City Auditor; and

WHEREAS, it is the desire of City to provide certain benefits, establish certain conditions of employment, and to prescribe working conditions for the City Auditor,

NOW THEREFORE, in consideration of the mutual covenants contained in this Contract and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the City and the City Auditor agree as follows:

1. DUTIES. City agrees to employ John C. Herbst as City Auditor of the City of Fort Lauderdale, Florida, to perform the functions and duties as set forth in the City's Charter, ordinances, regulations, rules, policies and standards, and to perform other associated and legally required duties and functions as City shall direct and from time to time assign to Employee. Employee agrees to perform all such functions and duties faithfully, competently, professionally, and promptly to the best of Employee's ability. It shall be a condition of this Contract that the Employee at all times during the term of this Contract hold and maintain an active license to practice public accounting pursuant to Chapter 473, Florida Statutes, as may be amended from time to time.

2. TERM.

(A) This agreement shall remain in full force and effect from August 1, 2012, until terminated by the Employer or Employee. Nothing in this Contract shall prevent, limit or otherwise interfere with the right of Employer to terminate the services of Employee at any time, subject only to the provisions set forth in Paragraphs 2(D) and 4 of this Contract.

(B) Nothing in this Contract shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from employment with Employer, subject only to the provisions set forth in Paragraph 2(D), of this Contract.

(C) Employee agrees neither to accept other employment nor to be employed by any other employer during the term of this Contract. The foregoing sentence does not preclude the occasional writing, teaching, or the like when performed during Employee's time off from working duties and hours.

(D) Employee shall give Employer written notice at least (60) days' in advance of his intent to leave employment with the City. Employer shall give Employee at least sixty (60) days' written notice of its intent to terminate this Contract.

3. SUSPENSION.

Employer may suspend the Employee for cause without full pay and benefits or absent cause with full pay and benefits at any time during the term of this Contract.

4. TERMINATION AND SEVERANCE PAY.

(A) In the event the Employer terminates the Employee's employment, Employer agrees to pay Employee a lump sum cash severance payment equal to four (4) months' salary and benefits

(B) In accordance with Florida Statutes s. 215.425 (4)(a)2, severance pay shall be prohibited when the employee has been fired for misconduct, as defined in s. 443.036 (30), by the Employer; or Employee's failure to maintain active and in effect his Florida license to practice public accounting.

(C) In the event that Employer, at any time during the term of this Contract, determines that the City is experiencing or may experience financial difficulties, such that the salaries, other financial benefits or both of the City's Management Category I employees are to be reduced, then Employee's salary, other financial benefits, or both may also be reduced, upon duly adopted Resolution of the City Commission, so long as all such reductions for such employees, as a group, are made to the same degree.

5. DISABILITY.

If Employee becomes unable to perform the essential functions of his job with or without reasonable accommodation because of a disability for a period of four (4) successive weeks beyond any accrued sick leave, or for sixty (60) working days over a ninety (90) working day period, Employer shall have the option to terminate this Contract, subject to the severance pay requirements of Paragraph 4, subparagraph (A), above. However, in such case Employee shall be compensated for any accrued sick leave, vacation, intervening holidays, and other accrued benefits to the same extent as Management Category I employees of Employer.

6. SALARY.

Employer agrees to pay Employee an initial base salary of \$183,055, less mandatory and voluntary deductions, subject to the City Commission's adoption of a resolution approving this Contract, payable in bi-weekly installments at the same time as other employees of Employer are paid, said salary being subject to any increases or decreases which Employer may determine are desirable based upon an annual performance review of the Employee, or upon the basis of general salary increases given to Management Category I employees, including cost of living increases, or both.

In addition, Employer agrees to adjust other benefits of Employee in such amounts and to such extent as the Employer may determine that it is desirable to do so on the basis of an annual performance review of the Employee, or on the basis of general benefit increases given to other Management Category I employees.

7. PERFORMANCE EVALUATION.

(A) Employer shall review and evaluate the performance of Employee periodically. Employer shall provide Employee with a summary written statement of the findings of Employer and provide an adequate opportunity for Employee to discuss the evaluation with Employer.

(B) Periodically, Employer and Employee shall discuss such goals and objectives which Employer determines necessary for the Employee's performance, and for the attainment of the Employer's policy objectives, and Employer shall establish a relative priority among those various goals and objectives.

8. HOURS OF WORK.

The defined work week for the Employee shall be a minimum of forty (40) hours, Monday through Friday. It is recognized that, on occasion, the Employee must devote time outside the normal office hours to business of the Employer.

9. OUTSIDE ACTIVITIES.

Employee shall not become involved in other forms of employment such as teaching, consulting or other non-Employer connected business without the prior approval of Employer. Any form of permitted outside activity shall not conflict or interfere with Employee's ability to perform the duties and responsibilities as required by this Contract, and shall not be violative of any applicable ethics laws or rules.

10. AUTOMOBILE.

Employee will receive payment of a car allowance at the rate and amount established for Management Category I employees. Employee shall be responsible for owning or leasing or otherwise legally possessing an automobile for his use, obtaining and paying the premiums for liability insurance with minimum limits of \$100,000.00/\$300,000.00, property damage insurance with minimum limits of \$50,000.00, and comprehensive insurance, and Employee shall be responsible for the expenses of operation, maintenance, repair, and regular replacement of Employee's personal automobile.

11. VACATION, SICK AND MILITARY LEAVE.

(A) Employee shall accrue, and have credited to Employee's personal account, vacation, longevity benefits and sick leave at the same rate and subject to the same conditions as Management Category I level employees of Employer.

(B) Employee shall be entitled to military reserve leave time pursuant to state law and City policy.

12. DISABILITY AND HEALTH INSURANCE; PHYSICAL EXAMINATIONS.

(A) Employer agrees to put into effect and pay the City's portion of premiums for group health, group dental, and group life insurance, covering the

Employee, to the same extent and providing the same coverage and benefits provided Management Category I employees of the City, as determined by the City in the City's sole discretion, conditioned upon the Employee's payment of the Employee's portion of the premiums for Employee coverage, and Employee's payment of premiums for dependent coverage, if any, in the amounts and in the manner determined by the City of Fort Lauderdale City Commission from time to time, and conditioned upon the Employee's and, if applicable, the Employee's dependent's or dependents', meeting any medical qualifications and any other qualifications for each respective plan or policy.

(B) Employee shall be afforded all benefits associated with physical examinations and the City Wellness Program to the same extent as are provided to Management Category I employees of the City.

13. RETIREMENT.

Subject to the provisions of Chapter 20, Article IV, Code of Ordinances of the City of Fort Lauderdale, Florida, as may be amended or revised, and subject to any other applicable laws, ordinances, rules, regulations, or policies currently in effect or subsequently enacted, promulgated, amended, or revised, employee may enroll and participate in one of the following retirement plans: the City's General Employees' Retirement System ("GERS"), the City's defined contribution plan, or the City's deferred compensation plan. In addition to Employee's selection of either the GERS or the City's defined contribution plan, Employee may participate in a City-approved deferred compensation (Section 457) plan by contributing Employee's funds *via* payroll deduction in accordance with and to the extent allowed by such plan and applicable laws and regulations.

14. DUES AND SUBSCRIPTIONS.

Employer agrees to pay for reasonable professional dues and subscriptions of Employee necessary for Employee's participation in national and state associations and organizations that the Employer agrees are necessary and desirable for both Employee's continued professional participation, growth and advancement and for the good of the Employer, subject to budgeting and appropriation and the availability of funds.

15. PROFESSIONAL DEVELOPMENT.

(A) Employer agrees to pay for the travel and subsistence expenses of Employee for conferences, short courses, institutes and seminars that the Employer agrees are necessary for both Employee's professional development and for the good of the Employer, subject to budgeting and appropriation and the availability of funds.

(B) The foregoing expenses shall be paid as prescribed by City ordinance, policy, and standards, and will be afforded to Employee to the same extent as such expenses are paid for Management Category I employees of the City.

16. INDEMNIFICATION.

Employer shall to the extent provided by laws of the State of Florida and City of Fort Lauderdale ordinances, defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of

Employee's duties as City Auditor. Employer will further, subject to City of Fort Lauderdale ordinances, compromise and settle any such claim or suit if deemed advisable by Employer and pay the amount of any settlement or any judgment rendered in connection with such a claim or suit.

17. RESIDENCY

It shall be a condition of this Contract that Employee maintain his residency within the geographic bounds of the City of Fort Lauderdale, Florida.

18. BONDING.

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

19. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

The City Commission, subject to the requirements of the City Charter, shall fix any such other terms and conditions of employment as it may determine to be desirable or necessary 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 Contract, the City Charter, or any other law.

20. NOTICES.

Notice pursuant to this Contract may be given by mail, by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) EMPLOYER: City Commission  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301
- (2) EMPLOYEE: John C. Herbst  
1030 NE 11 Ave, #401  
Fort Lauderdale, FL 33304

Alternatively or additionally, any notice required pursuant to this Contract may be personally served. Notice shall be deemed given and effective as of the date and time of personal service, or if mailed, effective as of the date of deposit of such written notice in the course of transmission in the United States Postal Service. The above addresses shall remain effective until written notice changing same has been provided.

21. GENERAL PROVISIONS.

(A) The provisions of this Contract constitute the entire agreement between the parties. No representation or understanding, whether communicated orally or in writing, is or shall be effective unless contained in this Contract.

(B) This Contract shall be binding upon and inure to the benefit of the heirs at law, executor, or personal representative of Employee, pursuant to Florida law.

(C) If any provision, or any portion of a provision contained in this Contract is held unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Contract, or such portion of it not having been held unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

(D) No alteration, modification or amendment of this Contract shall be effective unless contained in a writing, executed by the parties in a document of equal dignity with this Contract.

(E) This Employment Contract shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement and for any other legal proceeding shall be in Broward County, Florida, and in the event of federal jurisdiction, in the Southern District of Florida.

IN WITNESS WHEREOF, the Employer, by and through its authorized representative, and the Employee execute this Employment Contract as follows:

WITNESSES:

CITY OF FORT LAUDERDALE

\_\_\_\_\_

By: \_\_\_\_\_  
John P. (Jack) Seiler, Mayor

\_\_\_\_\_  
[Witness type or print name]

ATTEST:

(CORPORATE SEAL)

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Harry A. Stewart, City Attorney

WITNESSES:

John C. Herbst  
City Auditor

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John C. Herbst

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[Witness type or print name]

September 13, 2012 (9:32PM)