



# **City of Daytona Beach Shores**

*"Life is Better Here"*

*"A Premier, Friendly Place to Be"*

## **AGENDA CITY COUNCIL MEETING SEPTEMBER 20, 2019**

**11:00 AM, Shores Community Center, 3000 Bellemead Drive  
Daytona Beach Shores, FL 32118**

Upon being recognized, a member of the public shall proceed to the podium and give his or her name and address and may, thereafter, speak for a maximum of three minutes on any matter relevant to a specific agenda item. During "Audience Comments," a member of the public may speak on any matter relevant to City business which is not on the agenda, for a maximum of three minutes in accordance with Section 2-1.1(d) and 2-2 of the City Code. In accordance with Section 2-2, during periods set aside for public discussion any person desiring to speak shall secure a form located at the agenda table, complete the form and present it to the City Clerk so the speaker can be recognized by the presiding officer. The use of profanity, obscene language, threats or any violent or abusive conduct by any person shall constitute a violation of this section. It shall be the duty of the Director of Public Safety, upon the order of the presiding officer at any such meeting, to forcibly, if necessary, evict any person violating the provisions of this section from the Council Meeting Hall. Any such violation shall subject the offender, upon conviction thereof, to a fine and/or imprisonment as prescribed by Section 1-8.

### **CALL TO ORDER BY MAYOR**

### **ROLL CALL BY CITY CLERK**

### **NEW BUSINESS:**

- A. Discussion on City Manager Evaluation

### **ADJOURNMENT:**

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE HE OR SHE MAY NEED TO ENSURE AT HIS OR HER OWN EXPENSE FOR THE TAKING AND PREPARATION OF A VERBATIM RECORD OF ALL TESTIMONY AND EVIDENCE OF THE PROCEEDINGS UPON WHICH THE APPEAL IS TO BE BASED.

NOTE: IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN

ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF DAYTONA BEACH SHORES, 2990 S. ATLANTIC AVENUE, DAYTONA BEACH SHORES, FLORIDA 32118, TELEPHONE NUMBER 386-763-5364, CSCHWAB@CITYOFDBS.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.



## **CITY COUNCIL AGENDA MEMORANDUM SEPTEMBER 20, 2019 AGENDA**

**TO:** Honorable Mayor and Members of the City Council  
**FROM:**  
**PREPARED BY:** Cheri Schwab, City Clerk  
**SUBJECT:** Discussion on City Manager Evaluation

### **SYNOPSIS:**

The *City Charter* requires that the City Council " . . . shall at least annually review the salary. On the occasion of the annual salary review the Council shall make a systematic evaluation of the performance of the manager which shall be made a matter of public record."

The City entered a contract with the City Manager in June, 2002 which was amended in June, 2004. The documents are attached to this agenda item.

### **FISCAL IMPACT STATEMENT:**

The base annual salary that was established in the 2004 contract amendment was \$100,000.00 which has been automatically evaluated for an adjustment by a contract formula on June 1 of each year with any pay adjustment being effective on October 1 of each year.

### **BACKGROUND:**

#### **FACT SHEET:**

##### **CITY MANAGER ANNUAL COMPENSATION AND PERFORMANCE EVALUATION**

- (1). The matter of the City Manager's annual compensation and performance evaluation has not been discussed with the City Attorney for about 8 years when the then incoming Mayor questioned the ability to amend the City Manager's contract unilaterally.
- (2). The City Manager's contract which is now in effect was entered in 2002 and amended in 2004.
- (3). The *City Charter* provides as follows:  
**Sec. 3.03. - Compensation and annual evaluation of manager.**  
The City Council shall establish the salary and other benefits of the City Manager, and shall at least annually review the salary. On the occasion of the annual salary review the Council shall make a systematic evaluation of the performance of the manager which shall be made a matter of public record.
- (4). This is a very normative provision, but is usually in the employment contract and are implemented when the City Manager or HR Director advises the local governing body of the annual time and the matter is agendized for review and vote by the body on the consideration of a pay increase based upon the evaluation.
- (5). The above *City Charter* provision requires evaluations to be accomplished in public at a public meeting by

the entire City Council in accordance with Florida's *Sunshine Law*. Indeed, a recent State law (quoted below) prohibits contract "provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract." Thus, public action is required for openness and transparency purposes.

(6). The *Public Records Law* of Florida requires that all documents relating to the evaluation are public records which are open to the public. Please see (12), below.

(7). The City Manager contract states that the salary of the City is set by a formula of the average base salary of the city managers of the cities of Daytona Beach, Edgewater, Holly Hill, New Smyrna Beach, Ormond Beach, Ponce Inlet, Port Orange and South Daytona. That salary is to be calculated as of June 1 of each year (the date when the performance evaluation by the City Council is to be completed) and goes into effect on October 1 of each year. Thus,

(a). The contract is not consistent with the *City Charter* in that the "annual salary review" has no relationship with the annual "systematic evaluation of the performance of the manager".

(b). In any event, at a minimum, in terms of governmental transparency, a calculation of the new salary as of June 1 of each year should be made and noticed to the City Council in a public setting if not accomplished by resolution of the City Council as was proposed by Kurt with regard to City Council salaries.

(c). Under the terms of the contract, if any one of the eight cities grant a raise to the salary of its city manager, the salary of the City Manager, of course, mathematically is adjusted and the City Manager is given a raise regardless of the performance evaluation. That is why the conclusion in (a), above, was made.

(8). The salary formula does not indicate that a pay decrease is possible as Section 11 of the original 2002 contract states that the City "agrees to increase said base salary and/or benefits" of the City Manager "in such amounts and to such extent as the Council may determine that is desirable to do so on the basis of the annual salary review." That provision in Section 11 is inconsistent with the salary formula established in the 2004 amendment, but indicates that only increases are possible, not decreases.

(9). Additionally, the City Manager receives an additional payment into a deferred compensation account at the time of each bi-weekly salary payment which equals 10% of the salary derived from the formula. Accordingly, that amount goes up automatically, too.

(10). The contract cannot be modified without the approval of the City Manager. That is, it cannot be unilaterally amended,

(11). The City Council has the right to evaluate the City Manager as a collegial body as it deems appropriate.

(12). It would be totally inappropriate and unlawful for one Member of the City Council to complete a performance evaluation form in private and to file that performance evaluation form with the City Clerk, or other person, and for another Member of the City Council to read the performance evaluation form prepared by the other Member. That would constitute a violation of the *Sunshine Law*.

(13). The contract is for an indeterminate length and may be terminated with 60 days advance notice.

(14). If the City Council terminates the contract without cause, the City Manager is entitled to 100% of accrued benefits which are by and large:

(a).  $\frac{1}{2}$  of the City Manager's base salary (26 weeks although current State law set forth below limits severance pay to 20 weeks as the City Manager's contract is grandfathered).

(b). All sick leave accrued.

(c). All annual leave accrued.

#### **215.425 Extra compensation claims prohibited; bonuses; severance pay.—**

(1) No extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made; nor shall any money be appropriated or paid on any claim the subject matter of which has not been provided for by preexisting laws, unless such compensation or claim is allowed by a law enacted by two-thirds of the members elected to each house of the Legislature. However, when adopting salary

schedules for a fiscal year, a district school board or community college district board of trustees may apply the schedule for payment of all services rendered subsequent to July 1 of that fiscal year.

(2) This section does not apply to:

(a) A bonus or severance pay that is paid wholly from nontax revenues and nonstate-appropriated funds, the payment and receipt of which does not otherwise violate part III of chapter 112, and which is paid to an officer, agent, employee, or contractor of a public hospital that is operated by a county or a special district; or

(b) A clothing and maintenance allowance given to plainclothes deputies pursuant to s. 30.49.

(3) Any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:

(a) Base the award of a bonus on work performance;

(b) Describe the performance standards and evaluation process by which a bonus will be awarded;

(c) Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and

(d) Consider all employees for the bonus.

(4)(a) On or after July 1, 2011, a unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an officer, agent, employee, or contractor must include the following provisions in the contract:

1. A requirement that severance pay provided may not exceed an amount greater than 20 weeks of compensation.

2. A prohibition of provision of severance pay when the officer, agent, employee, or contractor has been fired for misconduct, as defined in s. 443.036(29), by the unit of government.

(b) On or after July 1, 2011, an officer, agent, employee, or contractor may receive severance pay that is not provided for in a contract or employment agreement if the severance pay represents the settlement of an employment dispute. Such severance pay may not exceed an amount greater than 6 weeks of compensation. The settlement may not include provisions that limit the ability of any party to the settlement to discuss the dispute or settlement.

(c) This subsection does not create an entitlement to severance pay in the absence of its authorization.

(d) As used in this subsection, the term "severance pay" means the actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated. The term does not include compensation for:

1. Earned and accrued annual, sick, compensatory, or administrative leave;

2. Early retirement under provisions established in an actuarially funded pension plan subject to part VII of chapter 112; or

3. Any subsidy for the cost of a group insurance plan available to an employee upon normal or disability retirement that is by policy available to all employees of the unit of government pursuant to the unit's health insurance plan. This subparagraph may not be construed to limit the ability of a unit of government to reduce or eliminate such subsidies.

(5) Any agreement or contract, executed on or after July 1, 2011, which involves extra compensation between a unit of government and an officer, agent, employee, or contractor may not include provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract.

## **LEGAL REVIEW:**

The Fact Sheet in the prior section summarizes the employment contract. There may be a document which discloses the salary adjustments since 2004 or the math applying the formula set forth in the contract. The evaluation of the City Manager does not effect the salary of the City Manager as set forth in the *City Charter*. The attached survey was used in Oviedo to evaluate a salary adjustment. The City Council has the ability to adjust the City Manager's salary above the amount which it currently is or the amount which it was adjusted to on June 1. That study may be of assistance in that regard. The City Council may not reduce the salary of the City Manager.

## **RECOMMENDATION:**

This is a discussion item to commence the requirement of the *City Charter* for the City Council to " . . . annually review the salary" and "n the occasion of the annual salary review the Council shall make a systematic evaluation of the performance of the manager which shall be made a matter of public record." The contract requires that "he City Council shall review and evaluate the performance of the City Manager no later than June 1 of each year." The City Council should undertake its obligations under the *City Charter* and the employment contract.

## **SUGGESTED MOTION:**

None. The City Council should determine how to proceed to address the requirements of the *City Charter* and the employment contract.

**ATTACHMENT:**     1.     City Manager Contract With Amendment

## FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into on the date provided hereafter, by and between the **CITY OF DAYTONA BEACH SHORES**, Florida, a municipal corporation, hereinafter referred to as "Employer of City", and **MICHAEL T. BOOKER**, hereinafter referred to as "Employee or City Manager", both hereinafter collectively referred to as "the parties", and agree as follows:

### WITNESSETH:

WHEREAS, The Parties entered into an Employment Agreement dated June 17, 2002; and

WHEREAS, The Parties have faithfully performed the duties provided in said Agreement; and

WHEREAS, The City Council met in regular session on June 9, 2004, and decided to amend certain terms and conditions of said Agreement; and

WHEREAS, The City Manager agreed to said amendments; and

WHEREAS, The Parties desire to reduce said amendments to writing; and

NOW, THEREFORE, In consideration of the mutual covenants contained, the parties agree as follows:

#### Section 2. Terms.

B. The term of this agreement shall be for a period of seven (7) years beginning June 17, 2002 and continuing until June 16, 2009. Thereafter said term shall automatically extend for an indefinite time until either party gives notice as provided for the agreement. Either party shall give the other party advance written notice of termination of this agreement a minimum of sixty (60) calendar days in advance unless the parties agree otherwise.

#### Section 3. Termination and Severance Pay is amended to read:

B. In the event the City Manager voluntarily resigns or is terminated for the following reasons: (1) felony or misdemeanor conviction of any crime involving personal gain to himself; or (2) willful neglect of duty, then in that event Employer shall have no obligations to pay the aggregate severance lump sum severance pay defined in Section 3, Paragraph A. Should the City Manager voluntarily resign prior to seven years of service, June 16, 2009, or is terminated for the reasons set forth in this section, accrued benefits will be paid as follows:

First year - zero (0%) percent  
Second year - zero (0%) percent  
Third year - twenty (20%) percent  
Fourth year - forty (40%) percent  
Fifth year - sixty (60%) percent  
Sixth year - eighty (80%) percent  
Seventh year and thereafter one hundred (100%) percent.

Section 4. Salary is amended to read:

Effective June 17, 2004 thru September <sup>30th @</sup> 20, 2005, Employer agrees to pay City Manager for his services rendered as City Manager an annual base salary of \$100,000.00 payable in installments at the same time as other employees of the City are paid. Thereafter the City Manager shall receive base salary in an amount equal to the average base salary of City Managers in the following Eastern Volusia County Cities: Daytona Beach, Edgewater, Holly Hill, New Smyrna Beach, Ormond Beach, Ponce Inlet, Port Orange and South Daytona. The amount shall be calculated as of June 1<sup>st</sup> of each year and shall be paid in installments beginning October 1<sup>st</sup> of each year beginning October 1, 2005.

All provisions of said employment agreement dated June 17, 2002 not amended or modified by this First Amendment To Employment Agreement are ratified, affirmed and incorporated herein by reference as if fully set forth herein.

Dated this 23 day of June, 2004.

**CITY OF DAYTONA BEACH SHORES**

By: [Signature]  
Greg Northrup, Mayor

[Signature]  
Michael T. Booker, Employee

ATTEST: [Signature]  
Cheri Schwab, City Clerk

APPROVED AS TO FORM: [Signature]  
William L. Colbert, City Attorney

Date: 6/23/04

## EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into on the date provided hereafter, by and between the **CITY OF DAYTONA BEACH SHORES**, Florida, a municipal corporation, hereinafter referred to as "Employer or City", and **MICHAEL T. BOOKER**, hereinafter referred to as "Employee or City Manager", both hereinafter collectively referred to as "the parties", and agree as follows:

### WITNESSETH:

WHEREAS, Employer desires to employ the services of said Employee as City Manager of the City of Daytona Beach Shores as provided for in the Charter of the City of Daytona Beach Shores; and

WHEREAS, it is the desire of the City to provide certain benefits, to establish certain conditions of employment and to set working conditions of said Employee; and

WHEREAS, it is the desire of the City to (1) secure and retain the services of Employee, and to provide inducement for him to remain in such employment, (2) to make possible full work productivity, and (3) to provide a means for terminating Employee's services at such time that Employer may desire to terminate his employ; and

WHEREAS, Employee desires to accept employment as City Manager of the City of Daytona Beach Shores;

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

#### Section 1. Powers and Duties of the City Manager.

A. The City hereby agrees to employ MICHAEL T. BOOKER as City Manager of the City of Daytona Beach Shores to perform the functions and duties specified in Section 3.05 of the City Charter, and to perform other legally permissible and proper duties and functions as the City shall from time to time assign, subject to this agreement. Employment shall commence on the ~~1<sup>st</sup> day of October, 1999~~ 17<sup>th</sup> day of June, 2002.

B. The City Manager shall be the Chief Administrative Officer of the City of Daytona Beach Shores and shall be responsible to the City for the proper administration of all affairs of the City of Daytona Beach Shores.

#### Section 2. Term.

A. The City Manager shall serve at the pleasure of the City Council as the governing body for an indefinite term and nothing herein shall be construed to prevent, limit or otherwise interfere with the right of the City to terminate the services of the City

Manager at any time subject only to the provisions of Section 3 this Agreement, as applicable. All references to the "term" of this Agreement, the use of dates and of time frames shall be construed as goals of the parties and shall not be binding upon either party.

B. The term of this Employment Agreement shall be for an initial period of two years beginning ~~October 1, 1999 and concluding September 30, 2001~~ June 17, 2002, and concluding June 16, 2004. Said term may be successively extended for a minimum period of one additional year at a time or as otherwise agreed upon by the parties. Said term may be successively extended by motion approved by the Council prior to each anniversary date of this Agreement.

C. Failure of the City Council to renew said Agreement shall constitute termination. Upon mutual consent of both parties, the City Manager may continue to function in the role of Manager until a permanent replacement shall be selected by the City or through the remainder of the Agreement term then in force. In the absence of such mutual agreement, the City Manager shall be free of all obligations of service to the City and shall be terminated immediately, consistent with the provisions of Section 3 of this Agreement.

D. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Manager to resign at any time from his position with Employer. In the event Employee voluntarily resigns as City Manager before expiration of the term of this Agreement, then Employee shall give the City a minimum of 30 calendar days advance notice unless the parties agree otherwise. ~~In the event of a voluntary resignation, the City Manager shall not be entitled to severance pay or severance benefits.~~

E. The City Manager agrees to remain in the exclusive employ of the City of Daytona Beach Shores during the initial term and extensions, if any. The term "employed" however, shall not be construed to include occasional teaching, writing, speaking or consulting performed on his time off, even if outside compensation is provided for such services. Said activities are expressly allowed, provided that in no case is any activity allowed which would present a conflict with the City Manager's performance of his duties for the Employer, City of Daytona Beach Shores. In the event overnight travel is required for such non-Employer related business, the City shall be notified in advance. Use of Employer-owned equipment for such purposes must be authorized in advance by the City Council.

### Section 3. Termination and Severance Pay.

A. In the event the City Manager is terminated by the City Council as the governing body, then in that event the City agrees to pay the City Manager, MICHAEL T. BOOKER, a lump sum cash payment equal to one-half (1/2) annual base salary (severance pay). The City Manager shall also be compensated for all earned sick leave, vacation (sometimes referred to as "personal leave"), holidays, other accrued time and benefits to date (severance benefits) calculated at the rate of pay and at the level of

accruals in effect upon termination. Accrued benefits shall not continue to accrue subsequent to termination.

B. In the event the City Manager voluntarily resigns or is terminated for the following reasons: (1) felony or misdemeanor conviction of any crime involving personal gain to himself; or (2) willful neglect of duty, then in that event Employer shall have no obligations to pay the ~~aggregate severance lump sum~~ severance pay defined in Section 3, Paragraph A. Should the City Manager voluntarily resign prior to two years of service, June 16, 2004, or is terminated for the reasons set forth in this section, no accrued benefits (severance benefits) will be paid.

C. Should the City Manager be permanently disabled or otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four successive weeks beyond any accrued leave, the City shall have the right to terminate this agreement subject to the severance provisions of Section 3A above. Disabled means because of injury or sickness, Employee cannot perform each of the essential functions of the position after appropriate accommodations have been made by Employer.

D. Contemporaneously with the delivery of the severance pay herein above set out, the City Manager agrees to execute and deliver to Employer a full and complete release, releasing Employer of all claims that MICHAEL T. BOOKER, individually and as the City Manager, may have against Employer.

#### Section 4. Salary.

Employer agrees to pay MICHAEL T. BOOKER for his services rendered pursuant hereto as City Manager an annual base salary of \$72,800.00, payable in installments at the same time as other employees of the City of Daytona Beach Shores are paid. In addition to the review provided for in Section 10A., upon completion of six (6) months employment, the City Council shall review Employee's initial job performance. If Employee's initial job performance requirements have been met, then Employee's base salary shall be increased by 2 ½%.

#### Section 5. Deferred Compensation.

A. Employer agrees to pay the City Manager annual deferred compensation in a lump sum amount equal to 10% of his bi-weekly base salary. Said deferred compensation shall be paid to the ICMA Retirement Corporation (ICMA-RC) or any other retirement fund or funds designated by the City Manager, on a bi-weekly schedule. Employer agrees to transfer ownership of said plan or retirement fund to succeeding employers upon the City Manager's resignation or discharge.

B. Employer agrees to pay the City Manager supplemental retirement contributions in a sum amount equal to the contributions of the City Manager up to but not exceeding

5% of his bi-weekly base salary. Said supplemental retirement contributions shall be paid to National Deferred Compensation, Inc. or any other retirement fund or funds designated by the City Manager, and payment shall be made on a bi-weekly schedule.

Section 6. Insurance Coverages and Annual Physical.

A. The City Manager shall be covered by the same health and dental plans as all other employees except that Employer shall pay the City Manager's employee share of premiums for the City Manager and his resident dependents, unless covered by another employer. ~~and that coverage shall be in full force and effect immediately upon start of his service to the City of Daytona Beach Shores, or if a waiting period is required, then the City shall reimburse the City Manager for COBRA premium(s) in the amount of \$200.00 per month.~~

B. Employer agrees to purchase and pay the required premiums for whole life insurance policies, providing coverage equal in amount to two times the total annual salary of the City Manager, with the beneficiary to be designated by the City Manager.

C. The City Manager agrees to submit once per calendar year to a complete physical examination, by a qualified physician of his choosing, the costs of which shall be paid by Employer.

Section 7. Automobile.

Employer shall provide a vehicle allowance of ~~\$350.00~~ \$400.00 per month to the City Manager, payable on or about the first day of each month. Said vehicle allowance shall be intended to reimburse him for local travel only, defined as travel within Volusia County. All travel outside of Volusia County shall be reimbursed at a cents-per-mile rate as dictated by City policy.

Section 8. Other Benefits.

All provisions of the City Charter, ordinances, rules and regulations of Employer relating to fringe benefits and working conditions uniformly applicable to City employees as they now exist or hereafter may be amended, shall also apply to the City Manager as they would to the other employees of Employer, in addition to said benefits enumerated specifically for the benefit of the City Manager herein. Except that all benefits which vary according to tenure shall be calculated and granted in accordance with City provisions using an equivalent original employment date of ~~October 1, 1999~~ June 17, 2002. Additionally, the City Manager shall ~~be credited with one year's worth of accrue~~ personal annual leave (sometimes referred to as vacation and sick leave) on a bi-weekly basis for a total of 27 personal leave days. ~~for use by the City Manager upon execution of this contract to assist with house hunting and other transitional needs.~~

#### Section 9. Professional Development.

Employer agrees to budget for and to pay the professional dues, subscriptions, travel, and subsistence expenses of the City Manager for professional participation and travel, meetings and occasions adequate to continue his professional development. Said participation on City time to include, but not be limited to the International City/County Management Association, Florida League of Cities, Florida City/County Manager's Association, and such other national, regional, state and local governmental groups and committees, short courses, institutes, and seminars budgeted by the City.

#### Section 10. Relocation Expenses.

~~Employer shall pay the expenses for moving the City Manager up to \$1,000.00, including his family and personal property from Delaware to the Daytona Beach Shores area. Said moving expenses to include packing, moving, storage costs, unpacking, and insurance charges. The City Manager agrees to secure at least two (2) bids from reputable moving companies for such services, and shall use the lowest possible bidder.~~

#### Section 11. Performance Evaluation.

A. The City Council shall review and evaluate the performance of the City Manager no later than ~~July~~ June 1 of each year. Said review shall be in accordance with specific criteria developed jointly by the City Council and the City Manager. Said criteria may be added to or deleted from as the City Council may from time to time determine, in consultation with the City Manager. In addition, Employer agrees to increase said base salary and/or benefits of Employee in such amounts and to such extent as the Council may determine that is desirable to do so on the basis of the annual salary review.

B. Annually, the City Council and the City Manager shall jointly define such goals and performance objectives that they determine necessary for the proper operation of the City of Daytona Beach Shores and in the attainment of the City's policy objectives; and shall further establish a relative priority among those various goals and objectives; said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified, and the annual operation budget and capital budget and appropriations provided.

#### Section 12. General Provisions.

A. The text herein shall constitute the entire Agreement between the parties. Any amendments to this Agreement must be in writing, approved and executed with the same formality as this original Agreement.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the City Manager.

C. This Agreement shall become effective upon adoption and approval by the City Council of the City of Daytona Beach Shores.

D. This Agreement shall be enforced and governed by the laws of the State of Florida. If one or more provisions, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

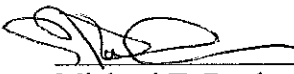
E. The parties agree that each has carefully read and fully understand all the provisions of this Employment Agreement, which sets forth the entire Agreement between the City and the Employee. Michael T. Booker, as the Employee, acknowledges that he has not relied upon any representation or statement, written or oral, not set forth in this document. Employee acknowledges that he has entered into this Employment Agreement voluntarily.

IN WITNESS THEREOF, the City of Daytona Beach Shores has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by its Acting City Manager, and the Employee has signed and executed this Agreement, both in duplicate.

**CITY OF DAYTONA BEACH SHORES**

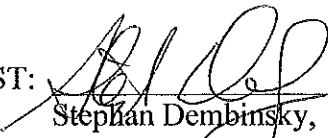
By:

  
Greg Northrup, Mayor

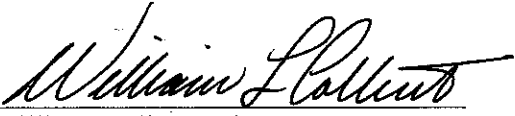
  
Michael T. Booker, Employee

Date: 6/17/02

ATTEST:

  
Stephan Dembinsky,  
Acting City Manager

APPROVED AS TO FORM :

  
William Colbert, City Attorney

Date:

6/12/02