

**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF ANN ARBOR AND HOWARD S. LAZARUS**

This first amendment is made April 18, 2018, to an agreement dated May 9, 2016, ("the agreement"), between Howard S. Lazarus ("Employee") and the City of Ann Arbor, a Michigan municipal corporation, having offices at 301 East Huron Street, Ann Arbor, Michigan 48107 ("City").

The following amendments were authorized by City Council on March 12, 2018.

Section 4 of the agreement is amended to increase the annual compensation as follows:

Section 4. Compensation: Effective January 1, 2018, the City agrees to compensate the Employee at an annual base rate of Two Hundred Twenty Three Thousand, and Six Hundred Dollars (\$223, 600.00), payable in biweekly installments at the same time as other employees of the City are paid. In addition, effective with execution of this amendment, Employee will receive a one-time lump sum payment in the amount of One Thousand, One Hundred and Eighteen Dollars (\$1,118.00)

Any and all revisions to the Employee's annual salary will be at the sole discretion of the City Council.

Section 6 of the agreement is amended to provide for payment of accrued and unused sick time upon voluntary resignation after five years of employment, as follows:

Section 6 – City Benefit Plans and Programs:

D. PAID SICK LEAVE DAYS: The Employee will begin accruing at the rate of ten (10) days annually upon his start date, earned on a pro rata basis each pay period. Except as otherwise explicitly stated in this sub-section, the Employee shall comply with the City's personnel rules, policies and procedures which govern the use of sick leave by Non-Union employees. Employee will be eligible to receive payment for any accrued and unused sick time, if and when he voluntarily resigns after a minimum of five years of employment.

Section 7 of the agreement is amended to provide access to the City of Ann Arbor Health Reimbursement Account upon voluntary resignation after five years of employment as follows:

Section 7 – Pension Plan and Retiree Healthcare:

C. The Employee shall receive an annual contribution into a Retirement Healthcare Reimbursement Account that shall be accessible when Employee becomes a retiree as defined in the City of Ann Arbor Health Reimbursement Account Plan Document. Pursuant to that Plan Document Employee will become a retiree when he voluntarily resigns from employment after a minimum of five years of employment. The annual actuarial contribution amount for the first year of service shall be \$2500 and shall be adjusted according to the City personnel rules, policies and procedures applicable to Non-Union City employees.

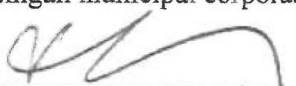
All other terms, conditions and provisions of the original agreement except as amended above are incorporated here by reference and shall remain in full force and effect.

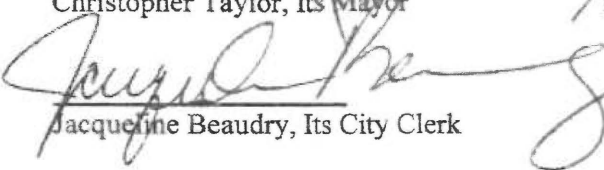
EMPLOYER:

EMPLOYEE:

CITY OF ANN ARBOR,
a Michigan municipal corporation

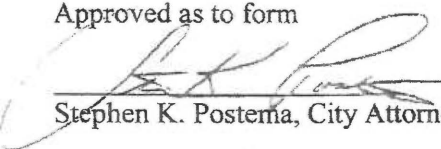
By:


Christopher Taylor, Its Mayor


Jacqueline Beaudry, Its City Clerk


Howard S. Lazard

Approved as to form


Stephen K. Postema, City Attorney

EMPLOYMENT
AGREEMENT BETWEEN
THE CITY OF ANN
ARBOR AND
HOWARD S. LAZARUS

THIS AGREEMENT is made and entered in this 9th day of May 2016, between the City of Ann Arbor, a Michigan municipal corporation, hereinafter called the "City," and Howard S. Lazarus, hereinafter called "Employee."

Section 1 --- Duties

The City agrees to employ Howard S. Lazarus as City Administrator of the City pursuant to Section 5.1 of the Charter of the City of Ann Arbor, Michigan, to perform in a competent and professional manner the duties and responsibilities of City Administrator for the City of Ann Arbor as set forth in the Charter and City Code of the City of Ann Arbor and in applicable laws and regulations, and otherwise as assigned by City Council.

Section 2 --- General Conditions and Terms of Employment

This employment agreement is contingent upon the Employee's acceptance of the appointment, the Employee's approval and acceptance of this employment agreement, approval by City Council of the Employee's appointment to City Administrator and this employment agreement, and satisfactory completion of all pre-employment aspects of this appointment, including a drug screen, background checks, driver's record check and any other pre-employment verifications deemed necessary by City Council.

A. EMPLOYMENT-AT-WILL: Subject to the terms and conditions of this employment agreement, and notwithstanding any City personnel regulation or representation to the contrary, the Employee shall be an "employee-at-will" and nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the employment of the Employee at any time except as such right to terminate employment is limited within this document.

B. TERMINATION/RESIGNATION:

(1) At any time during the term of this employment agreement, the Employee may resign from the City Administrator position upon providing to the City Council a written notice of sixty (60) or more days prior to the date of resignation. In the event of such voluntary resignation, the Employee will not be entitled to any severance pay.

(2) If City Council decides to terminate the Employee's employment as City Administrator for any reason other than pursuant to sub-section (3) below, the Employee will receive severance pay for a twelve (12) month period following the

date of termination, calculated on the basis of the annual salary he was receiving on the date of termination as stated in Section 4 or as subsequently changed by agreement of the parties. The City also will pay Employee the accrued leave time, if any, to which the Employee is entitled in accordance with the City's personnel rules, policies and procedures in effect on the date of his termination. Both the severance pay and the payment of accrued leave time will be paid within thirty (30) days after the date of termination or at such other time as is mutually agreed to between the City and the Employee.

(3) If the City Council terminates the Employee's employment agreement with the City for "just cause", the Employee will not be entitled to any severance pay. For this Agreement, "just cause" shall include, but not be limited to: willful misrepresentation to the City, either in connection with signing this Agreement or the performance by the Employee of his duties under this Agreement, an act of moral turpitude, willful misconduct, fraud, charged with a felony charge or convicted of a misdemeanor that would reflect negatively on the City, (such as, but not limited to, an offense involving drug/alcohol abuse or sexual misconduct), willful insubordination, or any breach of the terms and conditions of this agreement. Such termination would be effective thirty (30) days after the date of the written notice of termination. Written notice will state the reasons for the termination. If requested by the Employee within seven (7) days after the notice of termination, a hearing regarding the termination shall be held before City Council. Following the hearing, the City Council, at its discretion, may modify, reverse, or uphold the termination and the grounds for the termination.

(4) The role of City Administrator is considered a "key employee" under the Family Medical Leave Act (FMLA). The City Council may terminate the Employee's employment with the City in the event the Employee is unable to perform substantially all City Administrator duties/responsibilities for a period of sixty (60) consecutive days or more because of a medically established mental or physical disability, provided that a determination has been made that such medically established mental or physical disability will continue for at least ninety (90) additional days. Such termination will be effective sixty (60) days after written notice of termination from City Council, and such notice will also state the reasons for the termination. If requested by the Employee within seven (7) days after the notice of termination, a hearing regarding the termination shall be held before City Council. Following the hearing, the Council, at its discretion, may modify, reverse, or uphold the termination. The Employee's severance pay, as provided for in sub-section (2) above, will be reduced by the amount of disability benefits payments, or Worker's Compensation benefits, if any, paid by the City. The City reserves the right to have the Employee examined by a City selected physician, at the City's expense, in order to verify the mental or physical disability.

C. EXCLUSIVE EMPLOYMENT

During the term of this employment agreement, the Employee agrees to be employed exclusively by the City. With prior approval from City Council, the Employee may perform services such as teaching, lecturing, and assisting other governmental agencies and other professional obligations so long as such activities do not unreasonably interfere with the Employee's City duties/responsibilities.

D. EMPLOYMENT AGREEMENT TERM

The Employee agrees to begin employment as City Administrator for the City of Ann Arbor on June 27, 2016. The Employee's employment will continue unless the Employee dies or resigns or is terminated as provided for in sub-section 2.B.

E. LOCATION OF EMPLOYEE'S RESIDENCE

The City desires that the Employee reside within the City of Ann Arbor.

Section 3 --- Job Performance Evaluation

City Council will evaluate Employee's job performance annually. City Council will complete the Employee's annual job performance evaluation along with any approved salary adjustment, by no later than February 1st of each year, beginning February 1, 2017, with any revision to the Employee's salary to become effective January 1st of each year. Any salary adjustment associated with the performance review completed by February 1, 2017 shall be for the period of June 27, 2016 through January 1, 2017.

In consultation with the Employee, City Council's Administration and Labor Committee will develop the job performance evaluation process and criteria it will use each year. City Council, in its sole discretion, will make the final decision as to what process and criteria it will use, provided the process includes a self-assessment to be submitted by the employee.

Section 4 --- Compensation

The City agrees to compensate the Employee initially at an annual base salary of Two Hundred Fifteen Thousand Dollars (\$215,000), payable in biweekly installments at the same time as other employees of the City are paid.

Any and all revisions to the Employee's annual salary will be at the sole discretion of City Council.

Section 5 --- Relocation Expenses

The City will reimburse the Employee up to a maximum of \$40,000 for the following costs associated with relocation from Austin, TX.

- Movement of household goods, including packing at the point of origin, and shipment,

- storage, delivery and insurance costs
- Expenses associated with house hunting trips
- Temporary living
- Travel, including mileage and per diem during relocation
- Real estate expenses associated with purchasing a new home, realtor fees, title fees, closing costs, mortgage points, private mortgage insurance, down payment, etc.

Section 6 --- City Benefit Plans and Programs

- A. **INSURANCE PLANS:** The City will offer the Employee all insurance coverages provided to Non-Union employees, under the terms and agreements of such individual insurance plans. This coverage shall be effective upon the first day of employment
- B. The Employee may participate in all other City benefit programs (such as FSA, HRA, educational assistance, etc.) on the same terms as Non-Union employees in accordance with applicable laws, regulations, policies and guidelines governing these programs.
- C. The City reserves the right to alter, modify, or terminate any or all of its Insurance plans and other benefits provided to Non-Union employees during the course of this contract and Employee may not rely on any specific coverage or term of such plans or benefits being maintained by the City solely for Employee's benefit.
- D. **PAID SICK LEAVE DAYS:** The Employee will begin accruing at the rate of ten (10) days annually upon his start date, earned on a pro rata basis each pay period. Except as otherwise explicitly stated in this sub-section, the Employee shall comply with the City's personnel rules, policies and procedures which govern the use of sick leave by Non- Union employees.
- E. **PAID VACATION:** The Employee will begin his employment with ten (10) days or eighty (80) hours of vacation time in his bank, and will begin accruing additional vacation at the rate of twenty (20) days or 160 hours annually upon his start date, earned and credited on a pro rata basis each pay period. All other aspects of vacation usage and procedure shall be in accordance with City personnel rules, policies and procedures applicable to Non-Union City employees.
- F. **PERSONAL LEAVE:** The Employee shall be entitled to four (4) personal leave days per annum in accordance with City personnel rules, policies and procedures applicable to Non-Union City employees.
- G. **CELL PHONE:** The Employee shall receive the monthly voice and data cellular phone stipends on the same terms as Non-Union employees in accordance with applicable laws, regulations, policies and guidelines governing these programs.
- H. **VEHICLE USE/REIMBURSEMENT:** The Employee shall reasonably have available a City vehicle for official use in accordance with the City policy related to City fleet/pool vehicles or shall be reimbursed for use of his private vehicle for City business as proscribed by City policies and procedures.

Section 7 --- Pension Plan and Retiree Healthcare

- A. The City will make a contribution of fifteen percent (15%) of the Employee's annual salary to a qualified 401(a) plan sponsored by the City on the Employee's behalf. The contribution shall be made each pay period in which the Employee has contributed seven and one-half percent (7.5%) of his per pay period salary to such plan.
- B. The City's contribution to the 401(a) plan shall vest with the Employee according to the following schedule:
- 6/27/2017 – 33% of contribution will be vested
 - 6/27/2018 – 66% of contribution will be vested
 - 6/27/2019 – 100% of contribution will be vested

If the Employee is terminated for reasons other than just cause, as outlined in Section 2 above, all City Contributions shall be immediately vested.

- C. The Employee shall receive an annual contribution into a Retirement Healthcare Reimbursement Account which shall be accessible upon retirement from the City. The annual contribution amount for the first year of service shall be \$2500 and shall be adjusted according to the City personnel rules, policies and procedures applicable to Non-Union City employees.

Section 8 --- Professional Development

Employer agrees to budget for and to pay the professional dues and license fees, subscriptions, travel and subsistence expenses of Employee for professional participation and travel, meetings and occasions adequate to continue his professional development. Participation can include, but not be limited to the National League of Cities, International City County Management Association, Michigan Municipal League, Michigan City Managers' Association and such other national, regional, state and local governmental and community groups and their committees for which Employee serves as a member, or when participation is beneficial to Employer, as well as associated short courses, institutes and seminars.

Section 9 --- Indemnification

The City shall defend, save harmless and indemnify the Employee against any tort, professional liability claims, defamation, or other legal actions, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties/responsibilities as City Administrator, provided the Employee acted both in good faith and within the scope of his duties/responsibilities as City Administrator, and further provided the Employee fully cooperates with the City in its defense of the claim, demand or other legal action. The City may, in its discretion, compromise and settle any claim or suit and pay the amount of any settlement or judgment rendered. Indemnification shall not be provided to the Employee by the City if the claim, demand or other legal action results from the willful misconduct of willful insubordination of the Employee or if the claim, demand or legal action involves any proceeding where the Employee is the

plaintiff or an adverse party to the City.

Section 10 --- Conflict of Interest Prohibitions

It is further understood and agreed that because of the duties of the Employee within and on behalf of the City of Ann Arbor and its citizenry, the Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Ann Arbor, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the City Council. For and during the term of his employment, Employee further agrees, except for a personal residence or residential property acquired or held for future use as his personal residence, not to invest in any other real estate or property improvements within the corporate limits of the City of Ann Arbor without the prior consent of the City Council.

Section 11 --- General Provisions

This Agreement constitutes the entire understanding between the City and the Employee. There are no oral understandings, terms or conditions and no party has relied on any representation, express or implement, not contained in this Agreement. This Agreement may be changed by a written amendment signed by both parties. Michigan law shall govern this Agreement and any disputes arising from or related to this agreement shall be subject to the exclusive jurisdiction of a court of competent jurisdiction in Washtenaw County.

If any provision, or any portion thereof, contained in this employment agreement is held to be invalid or unenforceable, the remainder of this employment agreement, or portion thereof, shall be deemed enforceable, shall not be affected, and shall remain in full force and effect and such provision automatically reformed so as to be valid and enforceable and to nearly as possible reflect the intent of the parties.

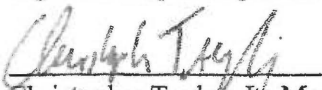
IN WITNESS WHEREOF, the City of Ann Arbor, Michigan, by its Mayor and its City Clerk, and the Employee have signed this employment agreement the day and year stated in the first paragraph.

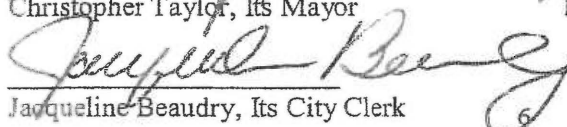
EMPLOYER:

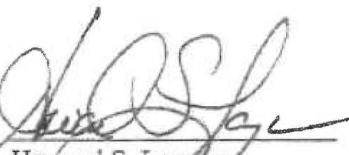
EMPLOYEE:

CITY OF ANN ARBOR,
a Michigan municipal corporation

By


Christopher Taylor, Its Mayor


Jacqueline Beaudry, Its City Clerk


Howard S. Lazarus

Approved as to form



Stephen K. Postema, City Attorney



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B. TERMINATION/RESIGNATION:

(1) At any time during the term of this employment agreement, the Employee may resign from the City Administrator position upon providing to the City Council a written notice of sixty (60) or more days prior to the date of resignation. In the event of such voluntary resignation, the Employee will not be entitled to any severance pay.

(2) If City Council decides to terminate the Employee's employment as City Administrator for any reason other than pursuant to sub-section (3) below, the Employee will receive severance pay for a twelve (12) month period following the

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D. EMPLOYMENT AGREEMENT TERM

The Employee agrees to begin employment as City Administrator for the City of Ann Arbor on June 27, 2016. The Employee's employment will continue unless the Employee dies or resigns or is terminated as provided for in sub-section 2.B.

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Section 11 --- General Provisions

This Agreement constitutes the entire understanding between the City and the Employee. There are no oral understandings, terms or conditions and no party has relied on any representation, express or implement, not contained in this Agreement. This Agreement may be changed by a written amendment signed by both parties. Michigan law shall govern this Agreement and any disputes arising from or related to this agreement shall be subject to the exclusive jurisdiction of a court of competent jurisdiction in Washtenaw County.

If any provision, or any portion thereof, contained in this employment agreement is held to be invalid or unenforceable, the remainder of this employment agreement, or portion thereof, shall be deemed enforceable, shall not be affected, and shall remain in full force and effect and such provision automatically reformed so as to be valid and enforceable and to nearly as possible reflect the intent of the parties.

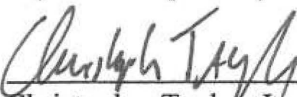
IN WITNESS WHEREOF, the City of Ann Arbor, Michigan, by its Mayor and its City Clerk, and the Employee have signed this employment agreement the day and year stated in the first paragraph.

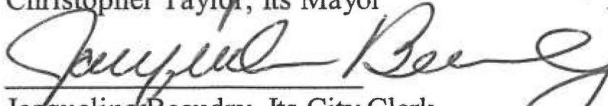
EMPLOYER:

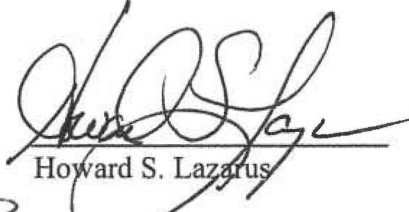
EMPLOYEE:

CITY OF ANN ARBOR,
a Michigan municipal corporation


By


Christopher Taylor, Its Mayor


Jacqueline Beaudry, Its City Clerk


Howard S. Lazarus

Approved as to form


Stephen K. Postema, City Attorney



City of Ann Arbor

Council Action

Resolution: R-18-094

301 E. Huron St.
Ann Arbor, MI 48104
<http://a2gov.legistar.com/Calendar.aspx>

File Number: 18-0453

Enactment Number: R-18-094

Proposed Resolution to Amend the Employment Agreement for City Administrator
Howard S. Lazarus

Whereas, The Employment Agreement between the City of Ann Arbor and the City Administrator Howard S. Lazarus dated May 9, 2016 calls for the City to conduct an annual performance review using mutually agreed upon criteria and allows for a review of the terms of the agreement and change by written agreement.

Whereas, The Council Administration Committee's current performance evaluation of Howard S. Lazarus is based on preliminary material received, including anonymous evaluations from City Council Members, his direct reports, as well as other related information;

Whereas, The Council Administration Committee has reviewed the performance evaluations and finds the City Administrator's performance to be between average and excellent overall; and

Whereas, The City Council believes providing equitable and sustainable compensation is critical to retaining employees that are essential to the City's ability to perform at levels expected by residents and taxpayers;

Whereas, The City Administrator is one of only two direct reports to the City Council, the other being the City Attorney, and those positions have had similar compensation structure over the tenure of the City Administrator;

Whereas, The City Administrator is responsible solely to the City Council;

Whereas, The City Administrator is responsible for the executive management of the highly diverse operations of the City of Ann Arbor and provides leadership, vision, and direction to City Departments, implements City Council policy, and works with City Council and administrative staff to craft strategic and financial planning objectives;

Whereas, The City Administrator position is one of significant responsibility and leadership;

Whereas, The City Administrator has provided effective and engaged leadership to the City over the past 18 months in many areas, including sustaining and enhancing a vibrant, safe, and diverse community; and

Whereas, The City Administrator currently earns a base salary of \$215,000.00

RESOLVED, that the employment agreement between Howard S. Lazarus and the City of Ann Arbor be amended as follows:

- 1) Section 4 of the Agreement be changed to reflect an increase to an annual salary of \$223,600.00, effective January 1, 2018.
- 2) Section 4 be amended to also provide a one-time lump sum payment of \$1,118.00.
- 3) Section 6.D be amended to add the following sentence at the end of the paragraph: Employee will be eligible to receive payment for any accrued and unused sick time, if and when he voluntarily resigns after a minimum of five years of employment.
- 4) Section 7.C be amended to read: The Employee shall receive an annual contribution into a Retirement Healthcare Reimbursement Account that shall be accessible when Employee becomes a retiree as defined in the City of Ann Arbor Health Reimbursement Account Plan Document. Pursuant to that Plan Document Employee will become a retiree when he voluntarily resigns from employment after a minimum of five years of employment. The annual contribution amount for the first year of service shall be \$2500 and shall be adjusted according to the City personnel rules, policies and procedures applicable to Non-Union City employees.
- 5) Section 7.D be deleted.

RESOLVED, That the Council Administration Committee place the final written performance evaluation in the City Administrator's personnel file; and

RESOLVED, That the Employment Agreement be amended to reflect the above Resolved Clauses and that the Mayor and City Clerk are authorized to execute the amendment.

Sponsored by: Mayor Taylor, Councilmembers Grand, Warpehoski, Krapohl, Lumm

As Amended by Ann Arbor City Council on March 12, 2018

At a meeting of the City Council on 3/12/2018, a motion was made by Sumi Kailasapathy, seconded by Jane Lumm, that this Resolution R-18-094 be Approved as Amended. The motion passed.

Yeas: 11 Councilmember Lumm, Councilmember Kailasapathy, Councilmember Warpehoski, Councilmember Eaton, Mayor Taylor, Councilmember Grand, Councilmember Krapohl, Councilmember Westphal, Councilmember Ackerman, Councilmember Smith, and Councilmember Bannister

Nays: 0