

RESOLUTION NO 38-19

2019 MAY 22 PM 1:58

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING THE EMPLOYMENT AGREEMENT WITH JONATHAN EVANS AS CITY MANAGER COMMENCING JULY 12, 2019; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on April 17, 2019 at the regular City Council meeting, the City Council agreed to offer employment to **Mr. Jonathan Evans** as City Manager for the City of Riviera Beach, Florida; and

**WHEREAS**, the City Council designated the City Attorney and City Council Chair to negotiate a compensatory and benefits employment contract; and.

**WHEREAS**, the City Council offered input and changes to the compensatory and benefits employment contract at the Special City Council meeting held on April 24, 2019; and

**WHEREAS**, the City Council continued to offer input and changes to the compensatory and benefits employment contract at the Regular City Council meeting held on May 1, 2019; and

**WHEREAS**, the Employment Agreement is effective commencing July 12, 2019.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, as follows:**

**SECTION 1.** That the City Council hereby approves the Employment Agreement with Jonathan Evans as City Manager for the City of Riviera Beach, commencing July 12, 2019.

**SECTION 2.** That the Mayor and City Clerk are authorized to execute the Employment Agreement on behalf of the City, said Agreement is attached hereto and made a part of this Resolution.

**SECTION 3.** That this Resolution shall take effect immediately upon its passage and approval by the City Council.

**PASSED AND APPROVED THIS 8th DAY OF MAY, 2019**

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

APPROVED:

*Ronnie L. Felder*

*Kashamba Miller-Anderson*  
KASHAMBA MILLER-ANDERSON  
CHAIRPERSON

ATTEST:

*Burgess, Deputy City Clerk*  
CLAUDENE L. ANTHONY,  
CERTIFIED MUNICIPAL CLERK  
CITY CLERK

*Julia A. Botel*  
JULIA A. BOTEL, Ed.D  
CHAIR PRO TEM

*Tradrick McCoy*  
TRADRICK MCCOY  
COUNCILPERSON

*Shirley D. Lanier*  
SHIRLEY D. LANIER  
COUNCILPERSON

DOUGLAS A. LAWSON  
COUNCILPERSON

MOTIONED BY: J. BOTEL

SECONDED BY: S. LANIER

T. MCCOY: NAY

K. MILLER-ANDERSON: AYE

S. LANIER: AYE

J. BOTEL: AYE

D. LAWSON: NAY

REVIEWED AS TO LEGAL SUFFICIENCY

*Dawn S. Wynn*  
DAWN S. WYNN, CITY ATTORNEY

DATE: 5/13/19

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (hereinafter referred to as "Agreement"), made and entered into this 8<sup>th</sup> day of MAY, 2019, by and between the City of Riviera Beach, Florida, a Florida municipal corporation (hereinafter referred to as "The City"), and Jonathan Evans (hereinafter referred to by name or as "City Manager").

### WITNESSETH:

WHEREAS, the City of Riviera Beach desires to employ Jonathan Evans as City Manager of the City of Riviera Beach, Florida, as provided for in Article II, Section 20 of the Charter of the City of Riviera Beach; and

WHEREAS, the City of Riviera Beach, through its City Council, 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, Jonathan Evans desires to accept employment as City Manager of the City of Riviera Beach, Florida 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. Employment.**

A. The City of Riviera Beach hereby hires and appoints Jonathan Evans as its City Manager, under the terms established herein, to perform the duties and functions specified in the City Charter and the City's Code of Ordinances and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

B. The City's employment of Jonathan Evans as City Manager shall be effective sixty five (65) days from the date of execution of this Agreement, (Date of Employment), for an indefinite term and for no less than three (3) years, with a three (3) year option to renew upon mutual agreement of the City Council and City Manager. City Manager is guaranteed one-year salary, and fringe benefits for an entire calendar year commencing on his start date with the City of Riviera Beach, even if City Manager is terminated prior to the initial performance evaluation, as long as City Manager is not terminated for misconduct pursuant to Florida Statute, §215.425. Additionally, if the amount of salary for the remainder of that year equals or exceeds twenty (20) weeks of severance, then City Manager shall be placed in a senior management or consulting position until the anniversary of one (1) year of employment and at said anniversary, will then be entitled to twenty (20) weeks of severance. Subsequent guarantees in years (2) and year (3) will be predicated on annual performance evaluations that at minimum meets standards pursuant to an evaluation matrix mutually agreed upon by the City and City Manager as provided by the Florida City/County Management Association (FCCMA). In the event the termination is without cause, in years two (2) and three (3), the City Manager shall be placed in a consulting or

management position within the City at the City Manager's salary until the anniversary of year (2) or three (3) as applicable after which the twenty (20) weeks of severance will be paid.

C. The City Manager will participate in an employee physical, drug and criminal screening, a degree verification check, and an employment reference check.

## **Section 2. Salary and Evaluation.**

A. Beginning on the City Manager's date of employment, the annual base rate salary will be TWO HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$200,000.00).

B. The City agrees to increase said base salary and/or other benefits of the City Manager in such amounts and to such an extent as the City Council may determine desirable on the basis of an annual performance evaluation of the City Manager. Such evaluation shall be in such form as the City Council deems appropriate using goals and objectives established by City Council and City Manager within sixty (60) days of the City Manager's date of employment. Said goals and objectives to be amended by the parties as necessary. An evaluation shall take place annually measuring progress toward meeting the goals and objectives.

C. On or before May 1, 2020, and thereafter annually, the City Manager shall initiate the evaluation process on such approved goals and objectives for the applicable rating period by submitting to the Council a self-appraisal of said period's performance. The appraisal shall address performance related to each of the goals and objectives agreed upon for said period's performance.

D. Nothing in this Section shall require the City to increase the base salary or other benefits of the City Manager. However, the City Manager shall be entitled to receive across the board/cost-of-living increases that may be granted to general employees from time to time. Furthermore, the City's failure to conduct the scheduled evaluation shall not constitute non-compliance with a material provision on the part of the City Manager.

## **Section 3. Duties and Obligations.**

A. The City Manager shall have the duties, responsibilities and powers of said office under the Charter and Ordinances of the City of Riviera Beach. The City Manager agrees to perform all duties and responsibilities faithfully, industriously, and to the best of his ability in a professional and competent manner.

B. The City Manager shall remain in the exclusive employ of the City and shall devote all such time, attention, knowledge and skills necessary to diligently perform his duties under this Agreement. The City Manager may, however, engage in educational and professional activities and other employment activities upon receipt of approval by the City Council, provided that such activities shall not interfere with his primary obligation to the City as its City Manager. The City Manager may not engage in business opportunities that conflict with the interests of the City and/or his fiduciary duty as City Manager. The City Manager shall dedicate no less than an average of forty (40) hours per week in the performance of his duties hereunder. The City

Manager may engage in outside employment with higher education institutions after his third year as City Manager. This limited engagement shall in no way impede his ability to serve as City Manager.

C. In the event the City Manager shall serve on any appointed boards or elected boards of any professional organization, or serve on any committees related to his professional activities, in the event any monies are paid, or gifts received, by the City Manager related to such service, such money or property shall be paid over to or delivered to the City, unless otherwise approved by the City Council.

#### **Section 4. Automobile Allowance and Communications Equipment.**

The City Manager is required to be on call for twenty-four (24) hour service. In recognition thereof:

A. The City shall grant to the City Manager an automobile allowance of \$500 per month, and the City Manager shall purchase, maintain and insure said vehicle. The City Manager shall not seek, and is not entitled to reimbursement for vehicular travel within 150 miles of the City. The City agrees to reimburse the City Manager for mileage for travel outside of 150 miles of the City associated with business of the City pursuant to the City's normal reimbursement policy.

B. The City shall provide the City Manager with systems communication and equipment, including but not limited to a smart phone and laptop, which is for the sole purpose of performing City business.

#### **Section 5. Dues and Subscriptions.**

The City agrees to pay the City Manager's professional dues for membership in the International City/County Management Association (ICMA), and the Florida City and County Management Association (FCCMA). The City shall pay other 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 Council.

#### **Section 6. Professional Development and Travel.**

To the extent provided for and approved in the City's adopted budget, the City agrees to pay reasonable and customary travel and subsistence expenses for the City Manager's travel to and attendance at the International City/County Management Association's (ICMA) annual conference, the Florida City and County Management Association's (FCCMA) annual conference and the Florida League of Cities, and such other national, regional, state, and local governmental groups and committees thereof which City Manager serves as a member. The City may choose to pay for the City Manager's attendance at other seminars, conferences, and committee meetings as it deems appropriate and approved by Council action.

**Section 7. 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.

**Section 8. Personal Time Off.**

The City Manager shall be entitled to twenty five (25) vacation days annually which shall accrue in accordance with City policy. Any unused vacation days shall accrue to the City Manager in accordance with City policy. Upon termination of this Agreement by either party, the City Manager shall be paid for each vacation day accrued at his then current salary. Payment for said vacation days shall be made to the City Manager regardless of the manner of termination.

**Section 9. Holidays.**

The City Manager shall be entitled to observe the same paid legal holidays as other City employees.

**Section 10. Sick Leave.**

The City Manager shall be entitled to twelve (12) sick days for the first year of employment which shall accrue in accordance with City policy. Sick leave shall accrue at the rate established under standard City personnel policies. Payment for all unused sick days shall be made to the City Manager regardless of the manner of termination.

**Section 11. Health, Dental, Life and Disability Insurance.**

During the City Manager's employment with the City, the City agrees to pay the full premium costs of health, dental and long term disability insurance under the terms of the City's group policies for an individual/family plan, subject to any standard City applicable co-pay obligation.

The City agrees to pay for term life insurance on the Manager's life, with the City's group life underwriter, in the amount of the City Manager's base salary of TWO HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$200,000). Said insurance shall be equivalent to such insurance generally provided to the City employees in management positions.

**Section 12. Brokerage Account/Retirement.**

The City agrees to pay into a brokerage account an amount equal to twelve (12%) of the City Manager's base salary adjusted annually (if any). Said funds shall be paid into the City Manager's brokerage account established by the City Manager. Such payments shall be payable in installments at the same time the salary payments are made to the City Manager. This brokerage account is in lieu of City Manager's participation in a Deferred Compensation Plan.

The City Manager is required to participate in the Florida Retirement System at the Senior Management Service Class.

**Section 13. Termination by the City, Severance Pay, and *Public Hearing*.**

**A. Severance Paid Without Cause**

Should a majority of the entire Council (three members) vote to terminate the services of the City Manager "without cause", the City Council shall provide the City Manager with sixty (60) days written notice of the termination and shall cause the City Manager to be paid any accrued and unpaid salary and benefits earned (including personal time off, holiday time and insurance) prior to the date of termination based on a forty (40) hour work week and twenty (20) weeks base salary as severance. 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 Council members and its officers, agents, and employees for all acts and actions (whether accrued or subsequently accruing) from the beginning of time until the date of release, said release to be prepared by the City Attorney. The termination with or without cause is not conditioned upon the City Manager's acceptance of the terms and conditions of the general release.

**B. With Cause**

In compliance with Florida Statutes, Section 215.425, in the event the City Manager is terminated for "just cause," the City shall be obligated to pay only the City Manager's compensation, if any, earned up to the last date of employment and any earned but unused vacation leave and sick leave.

For purposes of this Agreement, "just cause" is defined and limited to any of the following:

1. Gross negligence, nonfeasance or willful malfeasance in the performance of his duties that materially harm the City.
2. Conviction or a plea of guilty or no contest to a misdemeanor involving a crime of dishonesty or moral turpitude or felony crime, whether or not adjudication is withheld.
3. Neglect of duty, including the inability or unwillingness to properly discharge the responsibilities of office.
4. Violation of any substantive City policy, rule, or regulation, which would subject any other City employee to termination.
5. The commission of any fraudulent act against the interest of the City or breach of any fiduciary duty with respect to the City.

6. The commission of any act which involves moral turpitude, or which causes the City disrepute.
7. Any other misconduct as defined in Florida Statutes, Section 443.036(29).

**C. Reduction in Salary**

In the event the Council, at any time during the employment term, reduces the salary or other benefits of the City Manager, as identified herein, in a greater percentage than an equivalent across-the-board reduction for all full-time City employees, or in the event the City allegedly refuses to comply with any other material provision of this Agreement benefiting the City Manager, the City Manager shall notify the Council in writing of the alleged violation. The Council shall have forty-five (45) days from such notice within which to cure the violation, otherwise, the City Manager may at his option, consider such violation as termination "without cause" as of the date of such alleged reduction or refusal, and the severance pay provision and other termination provisions contained herein shall become applicable at the annual salary and benefit level in effect prior to the reduction or refusal.

**D. Public Hearing.**

Should a majority of the City Council (three members) vote to terminate the services of the City Manager "with cause", then within ten (10) days following such vote, the City Manager shall notify the City Council of his desire for a public hearing. Within twenty (20) days of receiving the City Manager's request for a public hearing, the City Council must provide the City Manager an opportunity to be heard at a public meeting. Notice of the hearing must be provided to the employee and the public.

**Section 14. Termination by the City Manager.**

The City Manager may terminate this Agreement at any time by delivering to the City Council a written notice of termination not later than sixty (60) days prior to the effective date of the termination. If the City Manager terminates this Agreement, then the severance provisions of Section 13, Paragraph A above, shall not apply. If the City Manager voluntarily resigns pursuant to this Section, the City shall pay to the City Manager all accrued compensation due the City Manager up to the City Manager's final day of employment, including any accrued sick, vacation and personal time off. The City shall have no further financial obligation to Employee pursuant to this Agreement. This subsection shall not prevent the City Manager from collecting any money earned as a result of participation in the City's deferred compensation retirement program.

**Section 15. Residency**

A. In accordance with the City Charter, Article II, section 21, the City Manager agrees to establish residency within the corporate limits of the City within 120 days of



employment and to maintain residence within the corporate limits of the City throughout the term of this Agreement.

**Section 16. Disability.**

If the City Manager becomes permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four consecutive weeks beyond any accrued leave, the City shall have the option to terminate this Agreement, subject to the severance pay provision outlined in Section 13, Paragraph A of this Agreement, as offset by any disability benefits the City Manager receives from or through the City.

Where necessary, to determine whether to continue the services of the City Manager due to his disability, the City reserves the right to require a physical or psychiatric examination by a qualified physician or psychiatrist to be chosen by the City Manager from a list of at least three doctors approved by the City. In the event such an examination is required, the City will pay all costs of said examination.

**Section 17. Indemnification.**

A. The City agrees, pursuant to Section 111.07, Florida Statutes to defend, save 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 that the City Manager reasonably believes to be in the scope of his duties or function, unless he acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The City will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. The City shall not be liable for the acts or omissions of the City Manager committed while acting outside the course and scope of his agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In such instance, the City Manager shall reimburse the City for any legal fees and expenses the City has incurred or otherwise paid, for or on his behalf, 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 as City Manager, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with the City.

**Section 18. 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 19. Code of Ethics.**

Inasmuch as the City Manager is an active full member of the International City/County Management Association (ICMA), the "Code of Ethics" promulgated by ICMA 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 20. Attorney's Fees.**

If any litigation is commenced between the parties concerning any provision of this Agreement or the rights and duties of any person in relation thereto, each party agrees to bear its own attorney's fees and costs up to and including trial and appellate proceedings. However, if any litigation is commenced with respect to the Amendment of the Settlement Agreement and General Release executed in Case No. 9:18-CV-80687, the City will pay the City Manager's attorney's fees and costs up to and including trial and appellate proceedings.

**Section 21. Release of Liability.**

City Manager recognizes that a threat of litigation has been made pursuant to the Amendment of the Settlement Agreement and General Release referenced herein. City Manager agrees to release and hold harmless the City from and against all claims, liability, expenses, loss, cost, damages or causes of action of every kind or character arising out of said hiring and/or any litigation to enjoin or enforce the original Settlement Agreement and General Release.

**Section 22. Relocation Expenses.**

Upon execution of this Agreement by all parties, the City agrees to make a one time, lump sum payment of up to \$10,000.00 for the purpose of relocating to the City. Should the City Manager be terminated, either voluntarily or involuntarily, from his position as City Manager prior to one year from the date of this Agreement, the City Manager shall be required to reimburse the City up to \$10,000.00, within thirty (30) days of said termination. Said repayment shall be pro-rated per month.

**Section 23. Consultant Costs.**

The City Manager agrees to consult with and provide consultant services to the Interim City Manager prior to the effective date of this Agreement. In consideration, the City agrees to reimburse the City Manager for travel related expenses associated with consulting services as the rate established by Florida Statute 112.061, and consistent with City policies, as approved by the Interim City Manager.

**Section 24. General Terms and Conditions.**

A. If any provision, or any portion thereof, contained in this Agreement is held by a court of competent jurisdiction to be unconstitutional, illegal, invalid or unenforceable, the

remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

B. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law or personal representative of City Manager.

D. This Agreement contains the entire Agreement of the parties. It may not be changed verbally, but only by an Agreement in writing signed by the parties.

E. Florida law shall govern this Agreement and any litigation that may arise from this Agreement, shall be filed and litigated in Palm Beach County, Florida.

F. Upon City Manager's death, the City's obligations under this Agreement shall terminate except for the following and the City agrees to:

1. Transfer of ownership of retirement funds, if any, to the City Manager's designated beneficiaries;
2. Payment of accrued leave balances in accordance with this Agreement;
3. Payment of outstanding hospitalization, medical and dental bills in accordance with the City's insurance policies or plans; and
4. Payment of all life insurance benefits in accordance with the City's insurance policies or plans.

G. 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.


H. This Agreement may be executed in duplicate or counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. No term, condition or covenant of this Agreement shall be binding on either party until both parties have signed it.

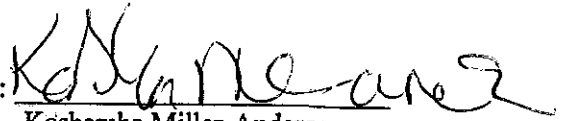
I. The effective date of this Agreement shall be the last date it is executed by either of the parties to this Agreement.

J. The parties agree that Section 2(A), 8 and 12 may be reopened for further discussion and negotiation after the first year of the Agreement.

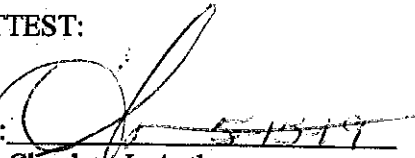
**IN WITNESS WHEREOF**, the parties have caused this Employment Agreement to be made and entered into the day and year first written above.

CITY OF RIVIERA BEACH, FLORIDA

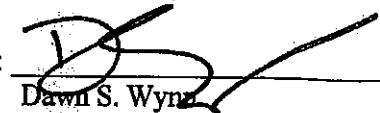
By:   
Ronnie Felder  
Mayor

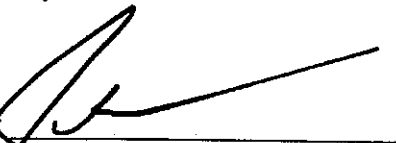
By:   
Kashamba Miller-Anderson  
Chairperson

ATTEST:

By:   
5-15-19  
Claudene L. Anthony  
City Clerk

As to form and legal sufficiency:

By:   
Dawn S. Wynn  
City Attorney

By:   
Jonathan Evans  
City Manager