

AGREEMENT

THIS AGREEMENT, made and entered into by and between the **COUNTY OF BREVARD, FLORIDA**, hereinafter called the "County", by its **BOARD OF COUNTY COMMISSIONERS**, hereinafter called the "Board", and **FRANK ABBATE**, hereinafter called the "Employee", both of whom understand as follows:

WITNESSETH:

WHEREAS, the County desires to retain the services of said Employee as the County Manager of Brevard County, Florida, as provided in the Brevard County Charter; and

WHEREAS, it is the desire of the Board of County Commissioners to provide certain benefits, set certain conditions of employment, and to establish a procedure for the termination of employment by the Board and the Employee; and

WHEREAS, Employee desires to continue employment as County Manager beyond his current employment agreement and FRS DROP date of April 30, 2024 of said County; and

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

SECTION 1. DUTIES

The County herein agrees to employ said Employee as County Manager of said County to perform the functions and duties specified in the Brevard County Charter and other applicable laws and ordinances and to perform such other legally permissible and proper duties and functions as the Board shall from time to time assign.

SECTION 2. TERMS

A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Board to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3, paragraphs A, B, C, and D of this Agreement.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with the County, subject only to the provisions set forth in Section 3, paragraph D, of this Agreement.

C. Employee agrees to remain in the exclusive employ of the County and will not become employed by another employer until termination is affected as hereinafter provided or as otherwise mutually agreed by both parties.

D. The Board approves to void said Employee's DROP participation. Employer will pay the difference between paid retirement contributions and required contributions for an active member, including any required employee contributions. Employee forfeits his DROP accrual.

SECTION 3. TERMINATION AND SEVERANCE PAY

A. Termination Hearing: The Board and Employee recognize the position of County Manager is the head of the executive branch of County Government for Brevard County. The Employee must maintain the confidence of the Board and discharge fully and properly the duties of his position. The employee shall serve at the will and pleasure of the Board. The Board may terminate the Employee at any time for the convenience of the County but only if a majority of the Board agrees. The Board may terminate the Employee for good cause (as defined in paragraph C, below) if, in a public meeting, a majority of the Board votes to terminate the Employee; however, the Employee shall then be afforded a written notice setting forth the reasons for termination and the Employee shall have ten (10) days from the receipt of said written notice to request a hearing before the Board of County Commissioners of Brevard County, Florida.

B. Termination for the Convenience of the County: In the event Employee is either terminated by the Board for the convenience of the County or is forced to resign during such time that Employee is willing and able to perform the duties of County Manager, then and in that event the County agrees to pay Employee a lump sum severance cash payment equal to twenty (20) weeks of compensation. As consideration for such severance pay, Employee shall, prior to receipt thereof, execute and deliver to the County a general release of the County, the Board, its officers, agents, and employees, for all acts and actions during his employment with the County (whether accrued or subsequently accruing) from the beginning of time until the date of release. "For the convenience of the County" as used in this Agreement means where the Employee is terminated by the Board without good cause; where a majority of the Board has lost confidence in the Employee performing the duties of his position; where termination of the Employee is in the best interests of the County as determined solely by the Board; or for any other reason the Board deems appropriate.

C. Termination for Good Cause: In the event the Employee is terminated by the Board for good cause, then and in that event the County shall have no obligation to pay the aggregate severance sum designated in Section 3, paragraph B. "Good cause" as used in this Agreement means misconduct, as defined in Section 443.036, Florida Statutes; removal from office pursuant to Section 112.51, Florida Statutes; insubordination, the violation of section 82-15 of the Code of Ordinances of Brevard County, Florida or the provisions of Policy XII of the Merit System Policies or nonfeasance, misfeasance, or malfeasance in the performance of the County Manager's job duties and responsibilities; or the conviction of, or a plea of guilty or no contest to, a felony crime or any crime involving dishonesty, moral turpitude, or which brings the County into disrepute, whether adjudication is withheld or not. The standard for good cause for dismissal may be established by measuring the conduct and performance of the Employee against the conduct and performance of other County Managers considering contemporary standards of employee conduct and performance.

D. Voluntary Resignation: In the event the Employee voluntarily resigns his position with the County, the Employee shall give the Board sixty (60) days' notice in advance, unless the parties agree otherwise. Upon resignation in good standing, the County agrees to pay Employee a lump sum severance cash payment equal to twenty (20) weeks of compensation. As consideration for such severance pay, Employee shall, prior to receipt thereof, execute and deliver to the County a general release of the County, the Board, its officers, agents, and employees, for all acts and actions during his employment with the County (whether accrued or subsequently accruing) from the beginning of time until the date of release.

SECTION 4. DISABILITY

If (a) the Employee is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity, or health for a period of three (3) months and (b) no reasonable accommodation is possible, to the extent required by state or federal law, the Board shall have the option to terminate this Agreement subject to the payment of the aggregate severance sum designated in Section 3, paragraph B. Employee shall be compensated for any accrued sick leave, vacation, holidays, and compensatory time, and shall be entitled to the same disability benefits as extended to other County employees.

SECTION 5. SALARY AND EVALUATION

A. The County agrees to pay Employee for his services rendered pursuant hereto an annual base salary of two hundred sixty-two thousand three hundred ninety-six dollars and forty-two cents (\$262,396.42), payable in installments at the same time as the other employees of the County are paid, commencing February 8, 2023. Cost of living increases shall be equal to those percentages as approved by the Board for County employees.

B. The County shall contribute for 2023, and for each year thereafter in which the Employee shall be employed as County Manager on January 1, the maximum allowed by applicable law to the Employee's 457 deferred compensation account, including any eligible catch up contributions established under the Internal Revenue Code. The County shall make the contribution for 2023 on or before May 30, 2023; and the contribution for each year thereafter on or before January 31.

C. In addition, the County may increase said base salary and other benefits of Employee in such amounts and to such extent as the Board may determine that it is desirable to do so based on a performance evaluation of the County Manager. Such evaluation shall be in such form as the Commission deems appropriate.

D. Nothing in this Section shall require the County to increase the base salary or other benefits of the County Manager. Furthermore, the County's failure to conduct any of the scheduled evaluations shall not constitute non-compliance with a material provision of this Agreement.

SECTION 6. ANNUAL AND SICK LEAVE

The Employee's prior service with FRS employers shall be credited towards his years of service with Brevard County when determining the annual and sick leave that he will receive from the County. The Employee will accrue annual and sick leave under the same rules as other career and appointive service employees under the Board generally receive. The Employee must use at least half his annual leave every year and may carry over the remainder. All accumulated annual time will be paid to the Employee when he leaves the County. The Employee will be reimbursed for 100% of unused sick leave.

SECTION 7. AUTOMOBILE AND CELL PHONE

The County shall provide a car allowance for the Employee's use of his personal vehicle. The annual allowance shall equal 65% of the average cost to own and operate

a new car (15k mi/yr) as published by AAA, and shall be payable in monthly installments. The Employee may request that the car allowance be adjusted once per year upon publication of the updated AAA study for such year. The County shall provide fifty dollars (\$50.00) per month for use of his personal cell phone for County business or be provided a County cell phone, at his discretion.

SECTION 8. DUES AND SUBSCRIPTIONS

The County agrees to pay dues and subscriptions on behalf of the Employee as are approved in the County's annual budget (on a line item basis) or as authorized separately by the County Commission.

SECTION 9. PROFESSIONAL DEVELOPMENT

The County agrees to pay registration fees and customary travel and meal expenses for the Employee's travel to and attendance at the Florida Association of County's Annual Conference and the Florida County and City Management Association's annual conference. The County may choose to pay for the Employee's attendance at other seminars, conferences and committee meetings as it deems appropriate and as approved by Commission actions.

SECTION 10. COUNTY RESIDENCY

The Employee agrees to maintain residence within the corporate limits of the County throughout the term of this Agreement.

SECTION 11. INDEMNIFICATION

A. County shall defend, save harmless, and indemnify Employee against any action for any injury or damage suffered as a result of any act, event, or omission of action that Employee 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 County may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. The County shall not be liable for the acts or omissions of Employee 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, Employee shall reimburse the County for any

legal fees and expenses the County 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 County Attorney, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with the County.

SECTION 12. BONDING

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

SECTION 13. CODE OF ETHICS

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 Employee's conduct and actions as County Manager of Brevard County.

SECTION 14. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. The Board shall fix, after consultation with Employee, any such other terms of employment, as it may determine desirable 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 Agreement, the County Charter, the laws of Florida, or any other applicable law.

B. County shall contribute, on Employee's behalf, the employer's share for Employee to participate as a Senior Management Service Class member in the Florida Retirement System ("FRS"). Employee shall pay the employee share.

C. All provisions of law and regulations and rules of County relating to vacation and sick leave, life insurance, disability benefits, retirement and pension system contributions, holidays and other fringe benefits as they now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of County, in addition to said benefits enumerated specifically for the benefit of Employee, except as otherwise provided herein.

SECTION 15. GENERAL PROVISIONS

- A. The text herein shall constitute the entire agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- C. This Agreement shall become effective commencing February 9, 2023.
- D. Florida law shall govern this Agreement and any litigation that may arise from this Agreement, shall be filed and litigated in Brevard County, Florida.
- E. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- F. This Agreement may not be modified or changed in any way whatsoever except by written agreement of the parties, unless otherwise provided herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed this ____ day of _____, 2023.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA

Rachel M. Sadoff, Clerk

By: _____
Rita Pritchett, Chair
As approved by the Board on _____

EMPLOYEE

Frank Abbate