



PORT ORANGE CITY COUNCIL

SPECIAL MEETING

Council Chambers

Tuesday, March 30, 2021 @ 5:30 PM

SPECIAL MEETING AGENDA

Pursuant to Section 3.06 of the Charter of the City of Port Orange, the Mayor has called a **Special Meeting** of the City Council to be held for the following purposes:

OPENING

1. Silent Invocation
2. Pledge of Allegiance
3. Roll Call

DISCUSSION / ACTION

4. Approval of Employment Contract with Robert Wayne Clark

ADJOURNMENT

NOTICES — PURSUANT TO SECTION 286.0105 OF THE FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THE CITY DOES NOT PREPARE OR PROVIDE SUCH A RECORD.



FOR SPECIAL ACCOMMODATIONS, PLEASE NOTIFY THE CITY CLERK'S OFFICE (PHONE: 386-506-5563) 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 OR HEARING DATE.



HELP FOR THE HEARING IMPAIRED IS AVAILABLE THROUGH THE ASSISTIVE LISTENING SYSTEM RECEIVERS CAN BE OBTAINED FROM THE CITY CLERKS' OFFICE.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA), 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, THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.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 OR HEARING 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.

ANY INVOCATION THAT IS OFFERED BEFORE THE OFFICIAL START OF THE CITY COUNCIL MEETING SHALL BE THE VOLUNTARY OFFERING OF A PRIVATE PERSON, TO AND FOR THE BENEFIT OF THE CITY COUNCIL. THE VIEWS OR BELIEFS EXPRESSED BY THE INVOCATION SPEAKER HAVE NOT BEEN PREVIOUSLY REVIEWED OR APPROVED BY THE CITY COUNCIL OR THE CITY STAFF, AND THE CITY IS NOT ALLOWED BY LAW TO ENDORSE THE RELIGIOUS BELIEFS OR VIEWS OF THIS, OR ANY OTHER SPEAKER. PERSONS IN ATTENDANCE AT THE CITY COUNCIL MEETING

ARE INVITED TO STAND DURING THE OPENING INVOCATION AND PLEDGE OF ALLEGIANCE. HOWEVER, SUCH INVITATION SHALL NOT BE CONSTRUED AS A DEMAND, ORDER, OR ANY OTHER TYPE OF COMMAND. NO PERSON IN ATTENDANCE AT THE MEETING SHALL BE REQUIRED TO PARTICIPATE IN ANY OPENING INVOCATION THAT IS OFFERED. A PERSON MAY EXIT THE CITY COUNCIL CHAMBERS AND RETURN UPON COMPLETION OF THE OPENING INVOCATION IF A PERSON DOES NOT WISH TO PARTICIPATE IN OR WITNESS THE OPENING INVOCATION.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 3/30/2021

Consent item: No

SUBJECT: (4) Approval of Employment Contract with Robert Wayne Clark

DEPARTMENT: City Attorney

GOAL:

RECOMMENDED MOTION: Move to approve the proposed Employment Contract with Robert Wayne Clark.

SUMMARY: Included in the agenda packet is the proposed Employment Contract with Robert Wayne Clark as negotiated with the Mayor and City Attorney.

Project No.:

Funding Account No.:

Presenter: Matthew Jones

ATTACHMENTS:

- | | |
|---|--|
| 1. CM Contract - Wayne Clark -
2021_Redacted | CM Contract - Wayne Clark -
2021_Redacted.pdf |
|---|--|

Robin Fenwick

Created/Initiated - 3/25/2021

EMPLOYMENT AGREEMENT

This Employment Agreement (hereinafter the "Agreement") is made and entered into this _____ day of March, 2021, by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation (hereinafter the "Employer" or the "City"), and **Robert Wayne Clark** (hereinafter the "Employee"), both of whom shall constitute the Parties and agree as follows:

Section 1: Term

This agreement shall remain in full force in effect for the employment commencing on April 19, 2021 until terminated by the Employer or Employee as provided in Section 11 of this Agreement subject to a voluntary resignation as provided in Section 13.

Section 2: Duties and Authority

Employer agrees to employ Robert Wayne Clark as the City Manager to perform the functions and duties specified for the City Manager in the Charter of the City and its Code of Ordinances; and to perform other legally permissible and proper duties and functions as directed by the City Council.

Section 3: Compensation

Base Salary: Employer agrees to pay Employee biweekly in the amount of Six Thousand Three Hundred Forty Six and 15/100 Dollars (\$ 6,346.15). The City shall deduct each pay period from that amount, federal income tax withholding, Medicare, social security along with such other deductions as requested or required.

Section 4: General Business Expenses and Professional Development

A. Employer agrees to budget and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the state league of municipalities and such other travel as approved by the City Council.

B. Employee may join professional memberships and attend annual and other conferences held by professional organizations. The Employer shall provide the expenses for membership, conference registration and travel expenses as established in the annual budget.

C. Employee may subscribe to professional publications, including but not limited to "Government Executive". All subscriptions costs shall not exceed \$500.00 annually.

Section 5: Residency Requirement

A. The Employee shall establish a permanent residence within the corporate boundaries of the City of Port Orange on or before November 1, 2021. Thereafter the Employee shall maintain a permanent residence within the corporate boundaries of the City of Port Orange during the term of this Agreement.

Section 6: Vehicle Allowance

The Employer shall pay to Employee a vehicle allowance, during the term of this Agreement and in addition to other salary and benefits, in the monthly sum of Five Hundred and 00/100 Dollars (\$500.00) to be used toward the purchase, lease, or ownership of, and to operate and maintain a vehicle, including the cost of fuel. Employer shall review and consider adjustments to the vehicle allowance every 3 years upon the request of the Employee.

Section 7: Technology

The Employer shall provide Employee with a laptop computer or tablet, software, and cell phone required for the Employee to perform the job and to maintain mobile communication.

Section 8: Holidays and Personal Leave Accruals

The City shall be closed seven days annually as prescribed in the adopted Civil Service Rules and Procedures, except for emergency. Upon execution of this Agreement by all parties, the Employee shall be credited 240 hours of personal leave and shall thereafter accrue Personal Leave each pay period at the same rate established for and applicable to Civil Service Employees. The Employee shall use a minimum of 80 hours of personal leave each calendar year. The Employee's accruals shall be capped at a maximum of 1,200 hours. The City shall convert at the end of each fiscal year any personal leave hours accrued in excess of the cap to a contribution to the Employee's ICMA-RC 457 Plan based on the Employee's hourly rate of pay at the time of the contribution. Upon termination of employment consistent with the terms of this Agreement, the Employee's accruals shall be paid to the Employee for each accrued hour in an amount equal to the Employee's hourly rate of pay at the time of termination.

Section 9: Deferred Compensation

The Employer shall contribute an amount equal to 10% of the Employee's biweekly compensation as provided in Section 3 to a deferred compensation 401(a) Plan, and Employee plans to contribute at least an amount equal to 5% percent of the biweekly compensation. Employee shall be eligible to participate in the Employer match for the Employee's voluntary contributions to the 457 plans as set forth in Section 54-48(c) of the City of Port Orange Code of Ordinances.

Section 10: Medical and Other Supplemental Insurance Benefits

A. The City agrees to provide and to pay the premiums for medical and dental insurance for the Employee equal to that which is provided to all other employees of the City.

B. The City shall pay the amount of premium due for term life insurance in the amount of three (3) times the Employee's annual base salary, including all increases in the base salary during the life of this Agreement. The City shall also pay the amount of premium due for accidental death and dismemberment insurance in the amount of three (3) times the Employee's annual base salary, including all increases in the base salary during the life of this Agreement. The Employee shall name the beneficiary of the life and AD&D insurance policy.

Section 11: Termination

For the purpose of this agreement, termination shall occur when:

- A. The majority of the governing body votes to terminate the Employee at a duly authorized public meeting.
- B. If the Employer, citizens or legislature acts to amend any provisions of the charter, code of ordinances or other enabling legislation pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.
- C. If the governing body offers to accept the resignation of the Employee, and the Employee resigns, then the Employee may declare a termination as of the date of the resignation.
- D. Breach of contract declared by either party with a thirty (30) day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20. Either party may declare a termination after the other party has failed to cure within the prescribed period.

Section 12: Severance

Severance shall be paid to the Employee in the amount equal to twenty (20) weeks of salary and benefits when employment is terminated as defined in Section 11, subject to the requirements of Section 215.425(4)(a), Florida Statutes (2020).

Section 13: Resignation

In the event that the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of sixty (60) days' notice. The City, in its sole discretion, may shorten the minimum notice set forth in this paragraph, and shall continue the weekly compensation to the date set by Employer. Employee shall not receive severance in the event Employee voluntarily resigns. In the event that the Employee desires to explore employment opportunities with another agency or business entity, the Employee shall notify the Mayor and City Council prior to commencing such a search.

Section 14: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business of the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

Section 15: Performance Evaluation

Upon request, the Employer may review the performance of the Employee. Employer shall review performance on or about May 1, 2022 and at least annually thereafter. The performance evaluation process, form, criteria and format shall be mutually agreed upon by the Employer and Employee.

Section 16: Outside Activities

The employment provided for by this Agreement shall be the Employee's sole employment. On or after May 1, 2022, the Employee may request the City Council to

consider authorizing the Employee to engage in specified outside consulting or teaching opportunities that provide indirect benefits to the Employer and the community, with the understanding that such specified outside consulting or teaching opportunities shall be approved in advance by action of the City Council and shall not constitute interference with nor a conflict of interest with the duties as City Manager.

Section 17: Indemnification

Subject to the provisions of insurance defense coverage, and consistent with federal, state and local law, the City shall defend, save harmless and indemnify Employee acting within the scope of his employment, against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of authorized duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employee may request Employer to provide independent legal representation at Employer's expense. Employer may not unreasonably withhold approval if the Employee has acted within the scope of employment. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify Employee acting within the scope of his employment, against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available. Employee recognizes that Employer shall have right to compromise or settle any suit in which the City of Port Orange is a named party without the Employee's consent. In the event the Employee is a party to the suit individually and the Employee has acted outside the scope of his employment, then the City shall not be bound by this indemnification, and Employee shall reimburse City for the attorney fees for independent legal representation. Further, Employer agrees to pay all reasonable litigation expenses of Employee as indemnified herein throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation.

Section 18: Bonding and Insurance

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance. Employee shall be provided coverage as a public official pursuant to the insurance policy as approved by the City Council.

Section 19: Other Terms and Conditions of Employment

The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Port Orange Charter or any other law.

Section 20: Notices

Notice pursuant to this Agreement shall be given by hand delivery, email or depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

EMPLOYER: Donald Burnette, Mayor
Port Orange City Hall
1000 City Center Circle
Port Orange, Florida 32129

EMPLOYEE: Robert Wayne Clark
[REDACTED]
[REDACTED]

Notice shall be deemed given as of the date of hand delivery, confirmed electronic transmission or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 21: General Provisions

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any other prior discussions or representations by or between the parties are rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. Notwithstanding the date of execution, the effective date of this Agreement shall be March 30, 2021.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

In Witness Hereof, the Parties have signed this Employment Agreement on the date and year set forth hereinafter.

EMPLOYEE

Robert Wayne Clark

Date:_____

**EMPLOYER
CITY OF PORT ORANGE**

By:_____
Donald O. Burnette, Mayor

ATTEST:

By:_____
Robin L. Fenwick, MMC, City Clerk

Date:_____