

RESOLUTION 2017-133 PASSED: NOVEMBER 27, 2017

**AUTHORIZING THE EXECUTION OF AN AMENDED
EMPLOYMENT AGREEMENT WITH ANNE MARIE
GAURA, CITY MANAGER OF THE CITY OF DEKALB.**

WHEREAS, the City of DeKalb is a home rule municipality which operates under the Managerial form of government pursuant to Article 5 of the Illinois Municipal Code; and

WHEREAS, the City Council has determined that it is advantageous to enter into an Amended Employment Agreement with current City Manager Anne Marie Gaura.


NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

Section 1: The Mayor of the City of DeKalb is authorized and directed to execute an Amended Employment Agreement with Anne Marie Gaura, City Manager of the City of DeKalb, in the form attached hereto as Exhibit "A".

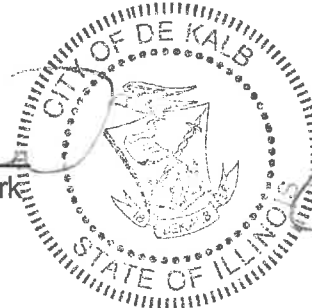

Section 2: That the City Clerk of the City of DeKalb, Illinois be authorized and directed to attest the Mayor's Signature and shall be effective thereupon.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a regular meeting thereof held on the 27th day of November, 2017, and approved by me as Mayor on the same day. Passed by a 5-3 roll call vote. Aye: Finucane, Marquardt, Noreiko, Faivre, Smith. Nay: Jacobson, Fagan, Verbic.

ATTEST:



SUSANNA HERRMANN, City Clerk

JERRY SMITH, Mayor

AMENDED EMPLOYMENT AGREEMENT

This Agreement is entered into effective as of the 27th day of November, 2017, by and between the City of DeKalb, State of Illinois, a municipal corporation, (hereinafter either "Employer" or "City"), and Anna Marie Gaura, (hereinafter "Employee"), both who agree as follows:

WITNESSETH:

WHEREAS, the City desires to employ the services of Anne Marie Gaura as City Manager of the City of DeKalb; and

WHEREAS, the City of DeKalb is a home rule municipality with home rule powers pursuant to Article 7, Section 6 of the Illinois Constitution; and

WHEREAS, the City of DeKalb wishes to enter into an employment agreement with Anne Marie Gaura for a term that may exceed the term of the mayor currently holding office; and

WHEREAS, the City of DeKalb intends to exercise its home rule power to render section 8-17(b) of the Illinois Municipal Code ineffective, 65 ILCS 5/8-1-7(b); and

WHEREAS, it is the desire of the City Council of the City of DeKalb hereinafter referred to as the "Council," to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Employee; and

WHEREAS, the parties acknowledge that Employee is a member of the International City/County Management Association (ICMA) and that Employee is subject to the ICMA Code of Ethics;

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

SECTION 1: DUTIES

Employer hereby employs Employee as City Manager of said Employer to perform functions and duties specified in the Ordinances of the City of DeKalb and the statutes of the State of Illinois, and to perform other legally permissible and proper duties and functions as the City Council (hereinafter the "Council") shall from time to time assign.

SECTION 2: TERM

A. Subject to the provisions of Sections 4 and 5, Employee agrees to remain in the exclusive employ of Employer from January 1, 2018, until the date upon which this Agreement is later terminated by either party.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of Employee at any time, subject only to the provisions set forth in Section 4, Paragraph A, B and C, of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from her position with Employer, subject only to the provisions of Sections 4 and 5 of this Agreement.

SECTION 3: SALARY

Commencing and effective January 1, 2018, Employer agrees to pay Employee for her services rendered pursuant hereto an annual base salary of \$168,171.95 payable in installments at the same time as the other management employees of the City are paid. Employer agrees to review said base salary on or before July 1 of each year and consider adjustment of said base salary equal to the cost of living percentage increase made to the annual base salaries of other employees of the City pursuant to Chapter 3 of the City of DeKalb's Municipal Code (periodically referred to as "Chapter 3"). Further, no less than annually, Employee shall be considered for an economic adjustment of Employee's then current salary on the basis of an annual merit review of said Employee made on or before the anniversary date of her employment.

SECTION 4: TERMINATION AND SEVERANCE PAY

A. In the event Employee is terminated by the Council before expiration of the aforesaid Term and during such time that Employee is willing and able to perform her duties under this Agreement, then Employer agrees to pay Employee a lump sum cash payment equal to six (6) months' aggregate salary (unless Employee is terminated for cause or voluntarily resigns, in which case no severance payment shall be made available unless made available under Section 4(C) below for a mutually-acceptable resignation). Employee shall also be compensated for all earned sick leave, vacation, personal leave, holidays, and all other accrued benefits to date in accordance with the then-current provisions of Chapter 3 of the City Code. If Employee completes the full Term of this Agreement and the parties elect not to enter into a new Agreement, for any reason other than cause, as hereinafter defined, then Employer agrees to pay Employee a lump sum cash payment equal to six (6) months aggregate salary. Employee shall also be compensated for all earned sick leave, vacation, personal leave, holidays and all other accrued benefits to date in accordance with the then-current provisions of Chapter 3 of the City Code. Upon such a termination or resignation, Employee shall be eligible for COBRA coverage. For purposes of this Agreement, "cause" shall mean Employee's termination for a) engaging in a substantial and unjustified breach of the Agreement; b) a conviction of a felony or misdemeanor crime involving deception or fraud; c) being grossly insubordinate; d) commencing competing employment (being employment which, in the Employer's judgment renders the Employee unable to perform her duties under this Agreement, or any other outside employment without the express prior written consent of the Employer); e) engaging in a willful violation of the City of DeKalb Municipal Code. For purposes of this definition, no act, or failure to act by Employee shall be deemed "willful" unless done or omitted to be done by the Employee not in good faith and without the reasonable belief that such action or omission was in the best interest of the City.

B. Notwithstanding any provision to the contrary contained herein, the Employee shall be compensated for all accrued vacation time, all paid holidays, sick leave and other accrued benefits to date up to the limits set forth in the then current provisions of Chapter 3 of the City of DeKalb Municipal Code. Any leave that is unused and in excess of the maximum accrual limits contemplated by Chapter 3 shall be deemed forfeited by the Employee.

C. Agreed-Upon Resignation: During the term of this Agreement, Employee and Employer may undertake a mutually acceptable, agreed-upon resignation wherein Employee would be entitled to the Severance and benefits contemplated with a for-convenience termination. In order to invoke such a mutually acceptable resignation, the Mayor of the City of DeKalb must sign a separate agreement, specifically referencing this section 4(C) and expressly indicating that he is approving of a voluntary, agreed-upon resignation of Employee, with severance.

D. In the event Employer suspends or terminates Employee, or Employee voluntarily resigns pursuant to Paragraph 4A hereof, Employee and Employer agree that neither party shall make any written or oral statements to the public or the press concerning Employee's termination or resignation except in the form of a joint press release mutually acceptable to Employer and Employee. The Parties acknowledge that the provisions of this Section 4(C) shall not be applicable to a termination or suspension for-cause.

E. For purposes of calculating the payout of accrued vacation or sick time pursuant to Chapter 3, the City shall base such calculation upon the Employee's years of actual employment by the City.

SECTION 5: VOLUNTARY RESIGNATION

In the event Employee voluntarily resigns her position with Employer before expiration of the aforesaid Term, then Employee shall give Employer thirty (30) days notice in advance. In such case, Employee shall be entitled to a payout of accumulated vacation/sick days in accordance with the then-current provisions of Chapter 3, but shall not be entitled to any severance pay.

SECTION 6: DEATH OR DISABILITY

If Employee is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of eight (8) successive weeks beyond any accrued sick leave and without prior approval of the Employer, Employer shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 4, paragraph A. If Employee dies while employed under this Agreement, Employee's beneficiaries or those entitled to Employee's estate shall be entitled to Employee's earned salary, sick leave, vacation, personal leave, holidays and other benefits accrued to date in accordance with the then-current provisions of Chapter 3.

SECTION 7: PERFORMANCE EVALUATION

A. The Council shall review and evaluate the performance of the Employee at least once annually in advance of the adoption of the annual operating budget. Said review and evaluation shall be in accordance with specific criteria developed jointly by Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation; (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to Employee with thirty (30) days of the evaluation meeting provided, however, the Employer's failure to deliver the results within thirty (30) days shall not constitute a material breach of this Agreement.

B. In effecting the provisions of this Section, the Employer and Employee mutually agree to abide by all provisions of applicable law.

SECTION 8: HOURS OF WORK

The Parties acknowledge that under current provisions of City Code, Chapter 3 employees are entitled to accrue and be compensated for "Comp Time" or "Compensatory Time." Notwithstanding such provisions, the Parties expressly agree and acknowledge that Employee is a management employee, exempt from FLSA overtime provisions. Employee shall not accrue or be eligible to be compensated for Comp Time or Compensatory Time, and any contrary provision of Chapter 3 shall be inapplicable to Employee. However, the Parties also recognize that Employee is the City Manager and, because of the 24/7 nature of this position, the Employee shall be eligible for additional time-off, without any deduction from compensation, as may be approved by the Mayor from time to time. Such additional time off shall be documented in writing if required by the Mayor.

SECTION 9: OUTSIDE EMPLOYMENT

Employee shall not engage in outside employment without the prior approval of the Mayor, which approval shall not be unreasonably withheld. In the event of any such outside employment, the City Council shall be notified, in writing.

SECTION 10: RESIDENCY

A. Employee agrees to establish residence within the corporate boundaries of the City of DeKalb within twelve (12) months of employment and thereafter maintain residence within the corporate boundaries. Employer shall pay Employee a sum not to exceed three thousand dollars (\$3,000.00) for such moving and relocation expenses Employee incurs in complying with this provision. Such payment shall be subject to the prior submission of a written estimate to the Mayor and his approval thereof, which approval shall not be unreasonably withheld.

B. In the event Employee is unable to establish residency within the time frame set forth herein, Employer shall have the right to approve an extension under such terms and conditions as the parties may mutually agree, which approval shall not be unreasonably withheld.

SECTION 11: AUTOMOBILE

The Employee is required to be on call for twenty-four (24) hour service, so therefore, must have access to a vehicle for City business. Employer shall grant to the Employee a car allowance of Four Hundred Dollars (\$400.00) per month at all times during her tenure as City Manager and Employee shall provide her own vehicle. Said vehicle allowance shall be payable at the same time as other management employees of the City. The monthly automobile allowance shall be considered for increase during the performance evaluation process.

SECTION 12: VACATION AND SICK LEAVE

A. Effective on January 1 and on each year on January 1 thereafter, Employee shall accrue, and have credited to her personal account, vacation in accordance with the then-current provisions of Chapter 3 of the City Code. For purposes of this calculation, the City shall base Employee's years of service upon her total years of service as a governmental employee (and not solely upon her years of service for the City). The Parties acknowledge that at the outset of her employment, Employee would be eligible for up to twenty five (25) vacation days annually (pro-rated based upon her start date). Employee shall be entitled to payment for all accrued vacation leave

(accrued to date for that annual period) upon termination of employment. Notwithstanding any other provision herein, Employer and Employee agree that the provisions of the Family Medical Leave Act apply to Employee.

B. During the Term of this her employment under this Agreement, Employee shall accrue, and have credited to her personal account, sick leave pursuant to the then-current provisions of Chapter 3 of the City of DeKalb Municipal Code. The Parties acknowledge that at the outset of Employee's term of employment, Employee shall be credited 5 sick days. Commencing upon her sixth month of employment (and every month thereafter unless and until Chapter 3 is amended to the contrary), Employee shall accrue one additional sick day per month, each month.

C. Employee shall be entitled to all paid holidays in accordance with the then current provisions of Chapter 3 of the City of DeKalb Municipal Code.

D. Employer acknowledges that as a municipal entity it maintains an intensive public meeting schedule. As a consequence, Employer acknowledges and agrees that Employee may, from time to time on a reasonable basis, miss public meetings in order to enable Employee to utilize her vacation, sick or personal leave.

SECTION 13: HEALTH AND LIFE INSURANCE

A. Employer agrees to provide hospitalization, surgical and comprehensive medical and dental insurance for Employee and her dependents and to pay the premiums thereon equal to that which is provided all other employees of Employer pursuant to Chapter 3 of the City of DeKalb Municipal Code. To the extent that the City now, or in the future, determines to require its employees to contribute some or all of the cost of said insurance benefits, the Employee agrees to contribute the same amount (expressed either as a percentage of the total cost, or as a set dollar amount, as the case may be) as is required by all other Chapter 3 employees of the City.

B. Employer shall provide travel insurance for Employee while she is traveling on Employer's business, with Employee to name beneficiary thereof, provided that funds have been previously budgeted and approved expressly for such purposes by the City Council.

C. Employer may require Employee to submit once per calendar year to a complete physical examination by a qualified physician, the cost of which shall be paid by the Employer. Such exam may include a stress test, heart evaluation and blood work.

SECTION 14: RETIREMENT AND DEFERRED COMPENSATION

Employer agrees to enroll the Employee in the IMRF and shall make all appropriate contributions on Employee's behalf, for both the Employer and Employee share required. Employer agrees to execute all necessary agreements provided by ICMA Retirement Corporation (ICMA-RC), or an equivalent plan acceptable to Employer and Employee for Employee's participation in said supplementary retirement plan, if desired by the Employee. Any contribution to such plan shall be in an amount determined and funded by the Employee and the Employer shall not be obligated to incur any expenses relating thereto.

SECTION 15: DUES AND SUBSCRIPTIONS

Employer agrees to pay for professional dues and subscriptions of Employee necessary for her continuation and full participation in the International City/County Management Association (ICMA), the Illinois City/County Management Association (ILCMA) and Metro Managers, necessary and desirable for her continued professional participation growth, and advancement, and for the good of the Employer. Notwithstanding language describing the Employer's "agreement to pay" certain expenses, any obligation to pay expenses under Section 15, 16, 17, 18 or 19 of this Agreement shall be expressly limited to funds that have been previously budgeted and approved expressly for such purposes by the City Council, which funds may or may not be budgeted and appropriated for such purposes in future years, in the discretion of the City Council.

SECTION 16: PROFESSIONAL DEVELOPMENT

Employer hereby agrees to pay for travel and subsistence expenses of Employee for a reasonable number of professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conferences, ILCMA Conferences, and such other national, regional, state, and local governmental groups and committees thereof which Employee serves as a member.

SECTION 17: TECHNOLOGY EQUIPMENT

Employer may agree to provide and pay for the cost of a laptop computer and cellular telephone.

SECTION 18: GENERAL EXPENSES

Employer recognizes that certain expenses of a non-personal and generally job-affiliate nature are incurred by Employee, and hereby agrees to reimburse or to pay said general expenses and the Finance Director is hereby authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits and approval by the City Council as further set forth herein.

Employer shall be responsible for Employee's reasonable general business expenses (in addition to other compensation or benefits contemplated herein), to the extent that such expenses shall be approved as a component of the Employer's annual budget. Subject to this limitation, the Parties generally contemplate that Employee shall be reimbursed for:

A. Reasonable travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the ILCMA Annual Conference, and such other national, regional, state, and local governmental groups and committees thereof which Employee serves as a member. Provided, however, all such reasonable travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer shall at all times be subject to the prior approval of the Mayor;

C. Subject to the prior approval of the Mayor, unless previously included and approved in the budget, travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for his/her professional development and for the good of the Employer.

SECTION 19: CIVIC CLUB MEMBERSHIP

Employer recognizes the desirability of representation in and before a reasonable number of local civic and other organizations, and Employee is authorized to become a member of such civic clubs or organizations, for which Employer shall pay the cost of membership.

SECTION 20: INDEMNIFICATION

In addition to that required under state and local law, and unless caused by the willful act or omission of Employee, Employer shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim, 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 or resulting from the exercise of reasonable discretion and judgment in connection with the performance of the duties and responsibilities required by Employer hereunder. Upon written request of Employee, Employer shall provide Employee with independent legal representation acceptable to the Employer, notwithstanding, if applicable, Employee's termination or resignation, which legal representation shall extend until a final determination of the legal action, including any appeals brought by any party. Employer shall indemnify and hold Employee harmless from and against any and all losses, damages, claims, judgments, settlements, liabilities, fines, costs, including reasonable attorneys fees and court costs, suffered or incurred by Employee in connection with or resulting from any claim, action, suit, proceeding, actual or threatened arising out of or relating to the performance of Employee's duties. Any settlement of any claim shall be made with prior written approval of Employer, provided however, if Employee is named as a party to any lawsuit, Employee's written consent shall be required for the compromise or settlement of claims against Employee.

SECTION 21: BONDING

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

SECTION 22: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. The Council, in consultation with the Employee, shall fix any such other terms and conditions of employment, as it may determine 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, or the City of DeKalb Municipal Code.

B. All provisions of the City, charter and code, regulations and rules of the Employer relating to vacation, sick leave, retirement and pension system contributions, holidays, and other benefits and working conditions as they now exist or hereafter may be amended, also shall apply to Employee as they would to other Chapter 3 employees of Employer, in addition to said benefits enumerated specifically for the benefit of Employee, except as herein provided.

SECTION 23: NO REDUCTION OF BENEFITS

Except with a mutually acceptable amendment of this Agreement, Employer shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Employee, except to the degree of such a reduction across-the-board for all Chapter 3 employees of the Employer.

SECTION 24: NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) EMPLOYER: City of DeKalb, Illinois
200 South Fourth Street
DeKalb, Illinois 60115
Attention: Mayor

(2) EMPLOYEE: Anne Marie Gaura
(OMITTED)
DeKalb, Illinois 60115

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 25: GENERAL PROVISIONS

A. The parties acknowledge that contemporaneously with approval of this Agreement, the Employer is updating Chapter 3 of the City of DeKalb Municipal Code to be consistent with this Agreement. The parties further acknowledge that Chapter 3 Employees are administrative employees who are not members of a collective bargaining unit. Except as otherwise expressly indicated herein, Employer shall be eligible for the benefits contemplated by Chapter 3 generally. The parties further acknowledge and agree that the benefits afforded under Chapter 3 are subject to change from time to time by action of the City Council and, notwithstanding the provisions of this Agreement, such changes shall be binding upon Employee from the effective date of such change, provided, however Employer shall not alter salary or vehicle allowance for Employee. Employee shall receive all additional benefits generally offered to other Chapter 3 Employees which are not specific to a given position (unless specifically exempted from such benefits under the terms of this Agreement).

B. The text herein shall constitute the entire agreement between the parties.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

D. If any provision, or any portion thereof, contained in this Agreement is held 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.

E. Except as specifically modified herein, all provisions of the City of DeKalb Personnel Manual and all other employee regulations shall apply to the Employment of Employee herein.

F. This Agreement may not be changed orally. All modifications of this Agreement must be in writing and must be signed by each party hereto.

IN WITNESS WHEREOF, the City of DeKalb, Illinois has caused this Agreement to be signed and executed in its behalf by its City Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.



Mayor of the City of DeKalb, Illinois

ATTEST:





City Clerk

(Seal)



Employee