

Employment Agreement - Finance Director

This Employment Agreement (the "**Agreement**"), is made and entered into as of this 8th of July, 2021 ("Effective Date"), by and between the **City of Derby** ("City"), and **Agata Herasimowicz** ("Employee"), collectively referred to herein as the "Parties."

WHEREAS, the City desires to employ the Employee on the terms and conditions set forth herein; and

WHEREAS, the Employee desires to be employed by the City on such terms and conditions.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and obligations set forth herein, the Parties agree as follows:

1. Term. Unless earlier terminated in accordance with Section 6 of this Agreement, the Employee's initial term of employment shall be for a period of three (3) years, commencing on July 6, 2021 and continuing through July 5, 2024 (the "Term"). Upon expiration of the Term or of any Renewed Term, this Agreement shall renew automatically for an additional one (1) year period (each a "Renewed Term"), on the same terms and conditions, unless either Party gives the other written notice of its intention not to renew the Agreement, at least ninety (90) days prior to the end of the Term or Renewed Term. The period during which the Employee is employed by The City under this Agreement, inclusive of the Term and any Renewed Term, is the "Employment Term."

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2. Position and Duties; Certification; Performance Evaluations.

2.1 Position and Duties. During the Employment Term, the Employee shall serve as the Finance Director of The City, reporting to the Mayor. The Finance Director is a full-time (35+ hours/week), salaried, exempt position, which is not eligible for overtime compensation. As Finance Director, the Employee shall have such duties, authority, and responsibilities as are consistent with the position, including as set forth in the City Charter, as set forth in such job description(s) as the City may adopt from time to time and such other or amended duties, authority and responsibilities as the City may direct or assign from time to time. The Finance Director shall be subject to and responsible for compliance with applicable local, state and federal laws and regulations. The Finance Director shall be bound by and shall observe and be subject to the City's policies as amended or revised from time to time. In the event of any conflict between the terms of any City policies and this Agreement, the terms of this Agreement shall govern.

2.2 Performance Reviews. The Mayor shall meet with the Employee after six (6) months and periodically thereafter (typically at least annually) to discuss the Employee's performance as Finance Director, the Employee's achievement of performance goals and objectives and/or to establish annual and/or interim goals and objectives for the Employee.

3. Place of Performance. The principal place of Employee's employment shall be at City Hall, located at 1 Elizabeth Street, Derby, Connecticut and such other locations as the City may authorize or direct from time to time. Employee may be required to travel on City business during the Employment Term.

4. Outside Activities. As directed or approved by the City, the Employee will participate in local, state, regional and national educational and/or professional associations and activities as the Finance Director and representative of The City. Notwithstanding the foregoing, the Employee will not be required to participate in activities which, in the discretion of the Employee and/or the City would interfere with the Employee's ability to meet performance expectations or otherwise fulfill the

Employee's duties and responsibilities as Finance Director. Except as expressly provided herein, the Employee shall devote substantially all of the Employee's business time and attention to the performance of the Employee's duties hereunder and will not engage in any other business, profession, or occupation for compensation or otherwise which would conflict or interfere with the performance of such services either directly or indirectly without the prior written consent of the Mayor.

5. Compensation and Benefits.

5.1 Base Salary. The Employee's base salary ("Base Salary") shall be in the amount of \$2,115.38 per week (approximately \$110,000.00 annualized), less lawful deductions and withholdings. The Base Salary shall be payable bi-weekly in accordance with The City's regular payroll practices. The Employee's Base Salary is subject to periodic review by the City, typically annually. The City may adjust the Employee's Base Salary during the Employment Term. Any such adjustments are at the City's sole discretion and shall not be subject to The City's administrative salary schedules, if any. The City shall provide the Employee with written notice of any adjustments in Base Salary.

5.2 Employee Benefits.

(a) Medical, Dental and Vision Insurance. During the Employment Term, the Employee shall be entitled to participate in such medical, dental and/or vision insurance benefits as the City may maintain or make available to members of the City Hall bargaining unit (Local 1303-155) under the then-operative collective bargaining agreement ("Health Benefits"). The Employee shall have an annual opportunity to opt out of Health Benefits in exchange for a buy-out. Provided that the Employee provides appropriate proof that the Employee and the Employee's eligible dependents have or will have other qualifying coverage (as required under the Affordable Care Act) during the opt-out period, Employee shall be entitled to an annual buy-out capped at \$2,000.

(b) Retirement Benefits. During the Employment Term, the Employee shall be eligible to participate in the following City-sponsored retirement benefits, subject to the terms and conditions of the applicable plan:

(i) 401(a) Plan. Annual contribution by the City in an amount equal to 2% of the Employee's annualized Base Salary;

(ii) 457 Plan. No City contribution;

(iii) 403(b) Plan. No City contribution.

(c) Holidays. During the Employment Term, the Employee shall be entitled to such paid holidays recognized by the City annually for similarly situated non-union City Hall employees.

(d) Paid Time Off. During the Employment Term, the Employee shall be eligible for paid vacation, sick and personal days ("PTO") as set forth in this Section 5.2(d):

(i) Vacation. 15 paid vacation days annually; eligible to use accrued paid vacation after three (3) months; eligible to carry over up to 5 accrued, unused paid vacation days from year to year;

(ii) Sick Days. 15 paid sick days annually; eligible to use accrued paid sick days after three (3) months; eligible to carry over up to 90 accrued, unused paid sick days from year to year;

(iii) Personal Days. 5 paid personal days annually; eligible to use paid personal days as of Start Date; no carry-over of accrued, unused personal days from year to year;

(iv) Accrual. PTO accrues on the Employee's Start Date and on the anniversary of the Employee's Start Date thereafter. Except as expressly set forth in this Section 5.2(d), PTO must be used within the employment year in which it accrues and does not accumulate or carry over from year to year;

(v) Except as expressly provided in this Agreement, there is no pay in lieu of PTO and no payment of accrued, unused PTO upon termination of employment.

6. Termination of Employment.

6.1 The Employment Term and the Employee's employment under this Agreement may be terminated by:

- (a) Mutual written agreement of the Parties at any time;
- (b) Notice of non-renewal of the Agreement by either Party in accordance with Section 1;
- (c) The City as set forth in Section 6.3;
- (d) The Employee's death as set forth in Section 6.4.

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6.2 Upon termination of the Employee's employment, the Employee (or the Employee's Estate, as applicable) shall be entitled to receive the compensation and benefits described in this Section 6.2 and shall have no further rights to any other compensation or benefits from The City:

- (a) Any accrued but unpaid Base Salary through the Employee's termination date, payable by The City's next regular payroll date following the termination date or as otherwise required by applicable law;
- (b) Payment for the Employee's accrued but unused vacation days, if any, as of the Employee's termination date, payable by The City's next regular payroll date following the termination date or as otherwise required by applicable law; provided that if the Employee is terminated for cause, the Employee shall not be eligible for payment of any accrued, unused vacation days and any such accrued, unused vacation days shall be forfeited;
- (c) Such employee benefits, if any, to which the Employee may be entitled under The City's employee benefit plans as of the Employee's termination date;
- (d) If the City terminates the Employee's employment on or before July 5, 2024 and if such termination is other than for cause, the City shall pay to the

Employee the lesser of the following amounts: (1) \$110,000.00 or (2) an amount equivalent to the Employee's Base Salary for the period between the termination date and July 5, 2024 ("Severance Pay"). The Employee shall not be entitled to the Severance Pay if terminated for cause on or before July 5, 2024.

6.3 The City may terminate the Employment Term and the Employee's employment under this Agreement for cause at any time upon any or all of the following:

- (a) The Employee's poor performance and/or failure to perform the duties and responsibilities of the Finance Director position, as determined by the City, which is not cured within thirty (30) days following written notice to the Employee by the City of the Employee's poor performance and/or failure to perform;
- (b) The Employee's engagement in dishonesty, illegal conduct and/or gross misconduct which is, in each case, materially injurious to the City's business or reputation or which violates City policies, codes of conduct, conflict of interest policies or other policies adopted by the City from time to time;
- (c) The Employee's indictment or conviction for commission of a felony or a misdemeanor (other than routine traffic offenses) by any governmental or regulatory authority that restricts her ability to perform the duties of the Finance Director and/or otherwise engage in the business conducted by the City;
- (d) The Employee's misuse of alcohol, controlled substances or illegal drugs and/or being under the influence of such at work;
- (e) The Employee's commission of an act which involves malfeasance or moral turpitude which has or, if generally known, would be reasonably likely to have a material adverse effect on the City's business or reputation.

To terminate for cause under Section 6.3, The City must provide written notice to the Employee, stating the grounds for termination, however nothing herein shall deprive The City of the right to terminate immediately for cause.

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6.4 Death. The Employee's employment shall terminate automatically upon the Employee's death during the Employment Term.

7. Governing Law, Jurisdiction, and Venue. This Agreement, for all purposes, shall be construed in accordance with the laws of Connecticut without regard to conflicts of law principles.

8. Entire Agreement. Unless specifically provided herein, this Agreement contains all of the understandings and representations between the Employee and The City pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

9. Modification and Waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by the Employee and by the Mayor of the City, subject to the approval of the City's Board of Alderman/Alderwomen. No waiver by

either of the Parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time.

10. Severability. Should any provisions of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.

11. Captions. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

12. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute one and the same Agreement. Signatures on faxed or electronically transmitted copies of this Agreement and signatures transmitted by facsimile, email or other electronic means shall have the same force and effect as originals.

13. Section 409A.

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13.1 General Compliance. This Agreement is intended to comply with Section 409A or an exemption thereunder and shall be construed and administered in accordance with such intent. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Any nonqualified deferred compensation payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from service or as a short-term deferral shall be excluded from Section 409A to the maximum extent possible. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made upon a "separation from service" under Section 409A. Notwithstanding the foregoing, The City makes no representations that the payments and benefits provided under this Agreement comply with Section 409A, and in no event shall The City be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by the Employee on account of non-compliance with Section 409A.

13.2 Specified Employees. Notwithstanding any other provision of this Agreement, if any payment or benefit provided to the Employee in connection with the termination of the Employee's employment is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A and the Employee is determined to be a "specified employee" as defined in Section 409A(a)(2)(b)(i), then such payment or benefit shall not be paid until the first payroll date to occur following the six-month anniversary of the date of the Employee's termination or, if earlier, on the Employee's death (the "**Specified Employee Payment Date**"). The aggregate of any payments that would otherwise have been paid before the Specified Employee Payment Date [and interest on such amounts calculated based on the applicable federal rate published by the Internal Revenue Service for the month in which the Employee's separation from service occurs] shall be paid to the Employee in a lump sum on the Specified Employee Payment Date and thereafter, any remaining payments shall be paid without delay in accordance with their original schedule.

13.3 Reimbursements. To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

(a) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;

(b) any reimbursement of an eligible expense shall be paid to the Employee on or before the last day of the calendar year following the calendar year in which the expense was incurred; and

(c) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

14. Successors and Assigns. This Agreement is personal to the Employee and shall not be assigned by the Employee. Any purported assignment by the Employee shall be null and void from the initial date of the purported assignment. The City may assign this Agreement to any successor or assign to all or substantially all of the business or assets of The City. This Agreement shall inure to the benefit of The City and permitted successors and assigns.

15. Notice. Notices and all other communications provided for in this Agreement shall be given in writing by personal delivery, electronic delivery, or by registered mail to the Parties at the addresses set forth below (or such other addresses as specified by the Parties by like notice):

If to The City:

City of Derby
1 Elizabeth Street
Derby, CT 06418
ATTN: Mayor

If to the Employee:

Agata Herasimowicz
50 Castlerock Lane
Bolton, CT 06043

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16. Representations of the Employee. The Employee represents and warrants to The City that:

The Employee's acceptance of employment with The City and the performance of the Employee's duties hereunder will not conflict with or result in a violation of, a breach of, or a default under any contract, agreement, or understanding to which the Employee is a party or is otherwise bound.

The Employee's acceptance of employment with The City and the performance of the Employee's duties hereunder will not violate any non-solicitation, non-competition, or other similar covenant or agreement of a prior employer or third-party.

17. Withholding. The City shall have the right to withhold from any amount payable hereunder any Federal, state, and local taxes in order for The City to satisfy any withholding tax obligation it may have under any applicable law or regulation.

18. Waiver. Any waiver by a Party of any breach by the other Party of any term or condition of this Agreement shall not be deemed a waiver of any other term or condition of this Agreement, nor shall the failure or delay by any party in exercising any right, power or privilege under this Agreement operate

as a waiver to preclude any other or further exercise of any right, power or privilege of the Party under this Agreement.

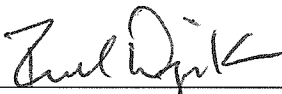
19. Survival. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the Parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the Parties under this Agreement.

20. Acknowledgement of Full Understanding. THE EMPLOYEE ACKNOWLEDGES AND AGREES THAT THE EMPLOYEE HAS FULLY READ, UNDERSTANDS AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. THE EMPLOYEE ACKNOWLEDGES AND AGREES THAT THE EMPLOYEE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF THE EMPLOYEE'S CHOICE BEFORE SIGNING THIS AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

CITY OF DERBY

EMPLOYEE

By: 
Richard Dzekan
Mayor


Agata Herasimowicz

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