

**CITY OF PORTSMOUTH, VIRGINIA**

— Established 1752 —

**Office of the City Attorney**

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Deputy City Attorney

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Shelia C. Riddick  
W. Eugene White  
Cheran D. Cordell

July 5, 2005

Mr. Mark Geduldig-Yatrofsky  
363 Middle Street  
Portsmouth, Virginia 23704

**Re: FOIA Request - City Manager Employment Contract**

Dear Mr. Geduldig-Yatrofsky:

Enclosed please find documents responsive to your request for “ a copy of the original employment contract with City Manager, James B. Oliver, Jr. and the one just approved by City Council yesterday.” Please note that in spite of the date on the new contract, it did not become legally binding until the contract was voted on and approved by City Council on June 28, 2005.

The Act also provides that a locality can charge for copying and search time. Although we are not waiving our right to charge for search time or copying fees, we are not charging you for this either on this occasion.

Sincerely,

Cheran D. Cordell  
Assistant City Attorney

CDC:ks  
encl.  
cc: G. Timothy Oksman, City Attorney

**INTERIM EMPLOYMENT AGREEMENT**

This agreement made and entered into this 18<sup>th</sup> day of June, 2004, by and between the City of Portsmouth, Virginia, a political subdivision of the Commonwealth of Virginia ( the "City") and James B. Oliver, Jr., provides as follows:

**WITNESSETH**

WHEREAS, the City desires to employ James B. Oliver, Jr., hereinafter "the Employee," as its Interim City Manager; and,

WHEREAS, it is the desire of the Portsmouth City Council (the "Council") to provide certain benefits, to establish certain conditions of employment, and to establish working conditions for the Employee; and,

WHEREAS, the Employee desires to accept said employment as Interim City Manager,

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

**Section 1. Duties**

The City hereby employs the Employee as Interim City Manager, to perform the functions and duties, and to exercise all rights and powers, as specified in the Portsmouth City Charter, as it may be amended from time to time, and to perform such other legally permissible and proper duties and functions as the Council shall from time to time assign, for the benefit of the City, its citizens, and its employees. The Employee accepts these responsibilities.

**Section 2. Term**

This agreement shall commence on June 18, 2004 and shall continue for a period of one year. It may be renewed and/or extended by agreement of the parties, provided, however, that:

A. Renewal or extension may be authorized only by duly recorded vote Portsmouth City Council.

B. Nothing contained herein shall prevent, limit, or otherwise interfere with the right of the

Council to terminate the services of the Employee at any time, subject only to the provisions set forth in the Portsmouth City Charter, and Section 3, paragraphs B and C, below.

C. Nothing herein shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from this position, subject only to the provisions set forth in Section 2, paragraph E, below.

D. The present City Manager, C. W. McCoy, shall work with the Employee as a consultant after the Employee becomes Interim City Manager, for the purpose of ensuring a smooth transition of the responsibilities of office, and also the uninterrupted provision of services to the citizens of Portsmouth. This transition period shall be seventy days. During the transition period, the Employee will work in good faith with Mr. McCoy for the purposes thus described.

E. If the Employee voluntarily resigns, then he/she shall give the Council at least thirty days written notice.

F. City acknowledges that Employee's personal residence is in the City of Norfolk and shall not be required to relocate his personal residence to the City of Portsmouth during the term of this Agreement.

### **Section 3. Termination and Severance Pay**

A.1. Termination without Cause. The City shall have the right to terminate this agreement at any time by providing the Employee with written notice setting forth the effective date of termination and paying severance pay, as set forth in Section 3B below.

A.2. Termination by the City for Cause. The City, acting through City Council, shall have the right to terminate this agreement for any one of the following causes by giving the Employee written notice setting forth the reason for termination and setting forth the effective date of termination:

(a) Conviction of a crime, but only if such conviction adversely affects ability to carry out duties.

(b) A material breach of responsibilities as City Manager.

(c) Willfully engaging in conduct which is demonstrably injurious to the City, monetarily or otherwise.

In determining whether the Employee has violated any of the causes in this paragraph, the City shall not act in an arbitrary or capricious manner. The Employee shall have no grievance rights or right of appeal for any termination for cause. In the event of termination for cause, this Agreement shall cease at once and the City shall be under no obligation to the Employee except to pay him for such compensation/benefits as he may be entitled to as of the date of termination.

B. In the event of termination of employment by City or Employee for any reason other than termination for cause, the Employee shall receive severance pay equal to the larger of (i) the amount of the remaining unpaid regular salary due as if Employee had continued employment for a full year, or (ii) six months salary and benefits.

C. If City Council at any time during the employment of the Employee reduces the salary or other financial benefits of the Employee in greater percentage than an applicable across-the-board reduction for all City employees, or if City Council refuses, following written notice, to comply with any other provision benefitting the Employee herein, or if there is no basis for termination of the Employee for cause, and he resigns following a suggestion, whether formal or informal, by a member of the Council that he do so, then he may at his option be deemed to be terminated not for cause at the date of such reduction or such refusal, and the provisions of Section 3B with regard to severance pay shall apply.

#### **Section 4. Salary**

The City shall pay the Employee at the base salary rate of \$135,000 per year, pro rated during the period of employment, to be paid bi-weekly.

#### **Section 5. Monthly Allowances**

The City shall provide an automobile allowance to the Employee in the amount of \$800 per

month, or provide an automobile acceptable to the Employee and commensurate with the dignity of his position, at the choice of the Employee. In addition to Employee being reimbursed for those expenses incurred pursuant to the Section 7 of this Agreement, the City shall provide an expense account to the Employee in the amount of \$300 per month.

**Section 6. Dues and Subscriptions**

The City shall budget and pay the professional dues and subscriptions of the Employee necessary for his continuation and full participation in national, state, and local associations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of the City.

**Section 7. Travel/Professional Development**

The City shall budget and pay the travel and related expenses of the Employee for all City business, professional and official travel, meetings, and occasions adequate to continue the professional development of the Employee and to adequately pursue necessary official and other functions for the City, including, but not limited to, the annual meetings of state and national local government associations, and such other national, regional, state, and local groups or committees thereof on which he serves as a member.

**Section 8. Other Benefits**

The Employee shall be provided at least the same benefits provided to other executive management staff of City, to include participation in the Virginia State Retirement System as a full and regular participant which shall be approximately nine percent of Employee's total compensation. City shall contribute on behalf of Employee a lump sum payment of \$14,000.00 before December 31, 2004 into Employee's ICMA Deferred Compensation Account. Employee shall be entitled to two days a month paid vacation during the term of this Agreement.

**Section 9. Other Terms and Conditions of Employment**

City Council shall fix any such other terms and conditions of employment as it may

determine from time to time, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, or any other law.

**Section 10. General Provisions**

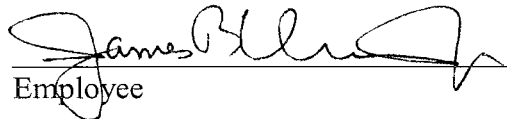
A. The text herein shall constitute the entire agreement between the parties. It supercedes and replaces any possible prior oral promises, representations, or agreements between the parties.

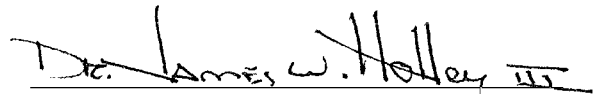
B. If any provision or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of the Agreement or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

C. The singular shall include the plural, and vice versa, unless the context clearly indicates otherwise.

D. This is a Virginia agreement, to be interpreted, applied, and construed according to the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, The City of Portsmouth, Virginia has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by the City Clerk, and approved as to form and legality by the City Attorney, and the Employee has signed and executed the Agreement, in triplicate, this date.

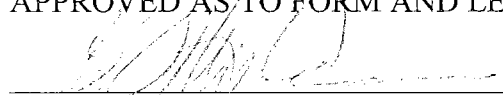
  
Employee

  
Dr. James W. Holley, III, Mayor

ATTEST:

  
Debra Y. White, City Clerk

APPROVED AS TO FORM AND LEGALITY:

  
G. Timothy Oksman, City Attorney

## EMPLOYMENT AGREEMENT

This agreement made and entered into this 20th day of June, 2005, by and between the City of Portsmouth, Virginia, a political subdivision of the Commonwealth of Virginia ( the "City") and James B. Oliver, Jr. (the "Employee"), provides as follows:

### WITNESSETH

WHEREAS, the City desires to employ the Employee as its City Manager; and,

WHEREAS, the Employee has been serving as Interim City Manager; and

WHEREAS, it is the desire of the Portsmouth City Council (the "Council") to provide certain benefits, to establish certain conditions of employment, and to establish working conditions for the Employee, for the benefit of the public; and,

WHEREAS, the Employee desires to accept said employment as City Manager on terms that benefit the public; and

WHEREAS, it is recognized that the bond that exists between the elected governing body and its appointed manager is their common obligation to make local government work for the good of the citizens in the community; and

WHEREAS, the success of the local government in meeting citizens' expectations and community goals depends significantly on that relationship: and

WHEREAS, it is further recognized that today's community culture creates tension between the value to govern and the value to represent. Pervasive social, political, and economic changes require close and successful partnerships between the governing body and the local government manager to sustain achievements and maintain the momentum of progress. This document describes in specific terms the roles and responsibilities associated with that bond.

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

## **Section 1. Duties and Responsibilities of the Parties**

A. The City hereby employs the Employee as City Manager, to perform the functions and duties, and to exercise all rights and powers, as specified in the Portsmouth City Charter, as it may be amended from time to time, and to perform such other legally permissible and proper duties and functions as the Council shall from time to time assign, for the benefit of the City, its citizens, and its employees. The respective duties and responsibilities of the parties are set forth in the following section.

B. In their respective dealings with each other, the Employee and the Council will honor the following general guidelines:

- The Council is the chief policy-making body of the government and has a continuing responsibility for mission and policy versus routine administrative matters. The Employee is the Chief Administrative Officer and Chief Executive for the City, as per Section 5.01 of the City Charter.
- The Employee will provide to the Council timely and adequate information and recommendations so that the Council may properly perform its mission and policy responsibilities in an orderly and fully informed manner.
- The Council and the Employee have a shared responsibility to insure that their relationship is open and honest.
- The Council has a responsibility to function as a single collegial body in giving direction to the Employee, and the Employee has a responsibility to deal equally with all Council Members.
- The Council and the Employee will remain committed to the Council's Vision Statement, the Comprehensive Plan, and other strategic goals approved by the Council.
- They will remain committed to the "Management Agenda," as reflected in the "Report Card" periodically provided by the Employee to the Council. It contains the following components:

projects/priorities; organizational development; community building; financial strength; Portsmouth's voice in the region; and other special initiatives approved from time to time by the Council.

- They will remain committed to the Council's "Vision Principles and Operating Principles," including mutual respect, civility, openness, and honesty.

C. The Employee's annual evaluation will be based on:

1. A review of the past year's performance to whether the expectations of the governing body were clearly communicated and realized.
2. Specific feedback to the Employee about areas in which he could have served more effectively.
3. Establishment of definite objectives and a plan and/or contract for the upcoming year.
4. Unless clearly changed or otherwise directed by Council, it will be the Employee's understanding that the Council's Vision Statement, its Vision and Operating Principles and the City's Comprehensive Plan should guide him. Also, until otherwise directed or changed, the Report Card shall be the primary discussion agenda for the Employee's ongoing performance.

D. The Employee and the Council accept these responsibilities, for the benefit of the public.

## **Section 2. Term**

This agreement shall commence on the date of execution and shall continue through June 30, 2007. It supercedes and replaces the prior contract between the parties, by which the Employee was hired to serve as Interim City Manager. It may be renewed and/or extended by agreement of the parties, provided, however, that:

- A. Renewal or extension may be authorized only by duly recorded vote of the Council.

B. Nothing contained herein shall prevent, limit, or otherwise interfere with the right of the Council to terminate the services of the Employee at any time, subject only to the provisions set forth in the Portsmouth City Charter, and Section 3, paragraphs B and C, below.

C. Nothing herein shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from this position, subject only to the provisions set forth in Section 2, paragraph D, below.

D. If the Employee voluntarily resigns, then he shall give the Council at least thirty days written notice.

E. The Employee will establish *bona fide* residence within the City of Portsmouth, as required by Section 2-107(a) of the Portsmouth City Code. The City will reimburse the Employee for all reasonable and actual moving expenses thus incurred.

### **Section 3. Termination and Severance Pay**

A.1. Termination without Cause. The City shall have the right to terminate this agreement at any time by providing the Employee with written notice setting forth the effective date of termination and paying severance pay, as set forth in Section 3B below.

A.2. Termination by the City for Cause. The City, acting through the Council, shall have the right to terminate this agreement for any one of the following causes by giving the Employee written notice setting forth the reason for termination and setting forth the effective date of termination:

(a) Conviction of a crime, but only if such conviction adversely affects ability to carry out duties.

(b) A material breach of responsibilities as City Manager.

(c) Willfully engaging in conduct which is demonstrably injurious to the City, monetarily or otherwise.

In determining whether the Employee has violated any of the causes in this paragraph, the

City shall not act in an arbitrary or capricious manner. The Employee shall have no grievance rights or right of appeal for any termination for cause. In the event of termination for cause, this Agreement shall cease at once and the City shall be under no obligation to the Employee except to pay him for such compensation/benefits as he may be entitled to as of the date of termination.

B. In the event of termination of employment by City or Employee for any reason other than termination for cause, the Employee shall receive severance pay. Severance pay shall consist of continued salary and benefits at the Employee's then-current rate of compensation, paid bi-weekly in the normal manner, for the following period: (a) if more than one year remains on the contract, then for a period of one year; or (b) if less than one year remains on the contract, then for the remainder of the contract.

C. If City Council at any time during the employment of the Employee reduces the salary or other financial benefits of the Employee in greater percentage than an applicable across-the-board reduction for all City employees, or if City Council refuses, following written notice, to comply with any other provision benefitting the Employee herein, or if there is no basis for termination of the Employee for cause, and he resigns following a suggestion, whether formal or informal, by a member of the Council that he do so, then he may at his option be deemed to be terminated not for cause at the date of such reduction or such refusal, and the provisions of Section 3B with regard to severance pay shall apply.

#### **Section 4. Salary**

The City shall pay the Employee at the initial base salary rate of \$150,000 per year, pro rated during the period of employment, to be paid bi-weekly. Thereafter, salary shall be as set in the City's annual Compensation Plan, as may be amended by Council from time to time.

#### **Section 5. Monthly Allowances**

The City shall provide an automobile allowance to the Employee in the amount of \$800 per month, or provide an automobile acceptable to the Employee and commensurate with the dignity of

his position, at the choice of the Employee. In addition to the Employee being reimbursed for those expenses incurred pursuant to the Section 7 of this Agreement, the City shall provide an expense account to the Employee in the amount of \$300 per month.

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**Section 7. Travel/Professional Development**

The City shall budget and pay the travel and related expenses of the Employee for all City business, professional and official travel, meetings, and occasions adequate to continue the professional development of the Employee and to adequately pursue necessary official and other functions for the City, including, but not limited to, the annual meetings of state and national local government associations, and such other national, regional, state, and local groups or committees thereof on which he serves as a member.

**Section 8. Other Benefits**

The Employee shall be provided at least the same benefits provided to other executive management staff of City, to include participation in the Virginia State Retirement System as a full and regular participant, which shall be approximately nine percent of Employee's total compensation. City shall contribute on behalf of Employee an annual lump sum payment of \$14,000.00 into Employee's ICMA Deferred Compensation Account, pro rated for each partial year. The Employee shall be entitled to two days a month paid vacation during the term of this Agreement.

**Section 9. Other Terms and Conditions of Employment**

City Council shall fix any such other terms and conditions of employment as it may determine from time to time, provided such terms and conditions are not inconsistent with or in

conflict with the provisions of this Agreement, the City Charter, or any other law.

**Section 10. General Provisions**

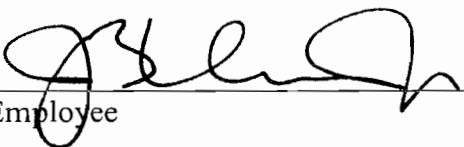
A. The text herein shall constitute the entire agreement between the parties. It supercedes and replaces any possible prior oral promises, representations, or agreements between the parties.

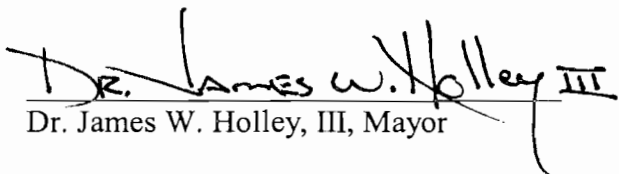
B. If any provision or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of the Agreement or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

C. The singular shall include the plural, and vice versa, unless the context clearly indicates otherwise.

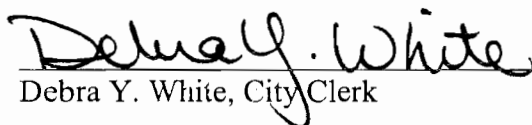
D. This is a Virginia agreement, to be interpreted, applied, and construed according to the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, The City of Portsmouth, Virginia has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by the City Clerk, and approved as to form and legality by the City Attorney, and the Employee has signed and executed the Agreement, in triplicate, this date.

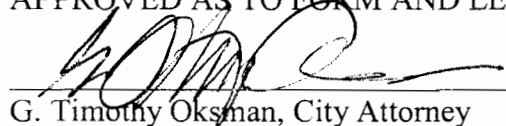
  
\_\_\_\_\_  
Employee

  
\_\_\_\_\_  
Dr. James W. Holley, III, Mayor

ATTEST:

  
\_\_\_\_\_  
Debra Y. White, City Clerk

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
G. Timothy Oksman, City Attorney