

RESOLUTION NO. 77-2019 (AS)

By Council Member Stein

A Resolution authorizing a Restated Memorandum of Agreement with Tanisha R. Briley as City Manager; and declaring an emergency.

WHEREAS, pursuant to Resolution No. 128-2013, this Council appointed Tanisha R. Briley to the position of City Manager for the City of Cleveland Heights, effective August 1, 2013, and authorized the execution of a Memorandum of Agreement with Tanisha R. Briley; and

WHEREAS, pursuant to Resolution No. 128-2013, the City of Cleveland Heights and Tanisha R. Briley entered into a Memorandum of Agreement that contained the terms and conditions of Ms. Briley's employment with the City, which was modified by the parties on June 2, 2014; and

WHEREAS, Tanisha R. Briley has held the position of City Manager for the City of Cleveland Heights uninterrupted since her appointment; and

WHEREAS, this Council has determined that it would be in the best interest of the City to enter into a Restated Memorandum of Agreement with Tanisha R. Briley.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The Mayor is hereby authorized to execute on behalf of the City a Restated Memorandum of Agreement with Tanisha R. Briley regarding her employment.

SECTION 2. The terms and conditions of her employment shall be as set forth in the City's Charter and ordinances and the Restated Memorandum of Agreement on file with the Clerk of Council.

SECTION 3. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the continuity of government. Wherefore, provided it receives the affirmative vote of five or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

RESOLUTION NO. 77-2019 (AS)

CAROL ANN ROE, Mayor
President of the Council

SUSANNA NIERMANN O'NEIL
Acting Clerk of Council

PASSED: July 29, 2019

RESTATED MEMORANDUM OF AGREEMENT

BY AND BETWEEN

THE CITY OF CLEVELAND HEIGHTS, OHIO

AND

TANISHA R. BRILEY, CITY MANAGER

EFFECTIVE ON AUGUST 12, 2019

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RESTATED MEMORANDUM OF AGREEMENT

This Restated Memorandum of Agreement (“Agreement”) is made and entered into this [date], by and between the City of Cleveland Heights, Ohio, an Ohio municipal corporation, (hereinafter referred to as the “City”) and Tanisha R. Briley, (hereinafter referred to as “Briley”) an individual who has the education, training and experience in local government management and who, as a member of the International City/County Management Association (“ICMA”), is subject to the ICMA Code of Ethics, each a “Party” and together the “Parties.”

WHEREAS, the City agreed to employ Briley as Cleveland Heights City Manager to perform the functions and duties specified in the Charter and the Codified Ordinances of the City of Cleveland Heights and to perform other legally permissible and proper duties and functions without interference by Resolution No. 128-2013 on July 15, 2013; and

WHEREAS, pursuant to Ordinance No. _____ adopted on _____, 2019, the City has agreed to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual promises set forth herein, it is hereby agreed:

SECTION 1: PRIOR AGREEMENTS

A. All prior agreements between the City and Briley are hereby revoked and are now null and void.

SECTION 2: TERM

A. This Agreement shall remain in full force and effect as of August 12, 2019 (“Effective Date”) until terminated by the City or Briley as provided in Section 10 or 12 of this Agreement (“Term”).

SECTION 3: DUTIES AND AUTHORITY

A. Briley is the chief executive officer of the City and shall faithfully perform the duties as prescribed in the job description as set forth in the City’s charter and ordinances and as may be lawfully assigned by the City and shall comply with all lawful governing body directives, state and federal law, City charter, policies, rules and ordinances as they exist or may hereafter be amended.

B. Specifically, it shall be the duty of Briley to employ on behalf of the City all other employees of the organization consistent with the policies of the governing body and the ordinances and charter of the City.

C. It shall also be the duty of Briley to direct, assign, reassign and evaluate all of the employees of the City consistent with policies, ordinances, charter, state and federal law.

D. It shall also be the duty of Briley to organize, reorganize and arrange the staff of the City and to develop and establish internal regulations, rules and procedures which Briley deems necessary for the efficient and effective operation of the City consistent with the lawful directives, policies, charter,

ordinances, state and federal law.

E. It shall also be the duty of Briley to accept all resignations of employees of the City consistent with the policies, charter, ordinances, state and federal law, except Briley's resignation which must be accepted by the governing body.

F. Briley shall perform the duties of city manager with reasonable care, diligence, skill and expertise.

G. All duties assigned to Briley by the governing body shall be appropriate to and consistent with the professional role and responsibility of Briley.

H. Briley cannot be reassigned from the position of city manager to another position without Briley's express written consent.

I. Briley or designee shall attend, and shall be permitted to attend, all meetings of the governing body, both public and closed, with the exception of those closed meetings devoted to the subject of this Agreement, or any amendment thereto or otherwise consistent with the charter, ordinances, and state law.

J. Briley shall respond to all substantive criticisms, complaints, and suggestions that the governing body calls to her attention in a timely manner for study and/or appropriate action.

SECTION 4: COMPENSATION

A. Base Salary: City agrees to pay Briley as a W2 employee at an annual base salary of \$147,112, payable in installments at the same time that the other employees of the City are paid, effective upon the Effective Date.

B. This Agreement shall be deemed to have been amended upon written confirmation by the President of Council or his or her designee, without further action of the Parties, to reflect any salary adjustments, compensation policies, or other benefits that are provided by this Agreement or incorporated by this Agreement in accordance with salary adjustments, compensation policies, or other benefits provided or required by the City's compensation policies for non-bargaining unit employees.

C. On the first day of April of each year or such other effective date of an ordinance establishing annual compensation and benefits for employees of the City (the "Annual Compensation Effective Date"), the City agrees to increase Briley's base compensation by a percentage equal to at least the average across the board percentage increase granted to non-bargaining unit employees of the City (the "Base Compensation Increase"). Such Base Compensation Increase shall be deemed to have been approved in March of each year prior to the Annual Compensation Effective Date upon written confirmation of the President of Council or his or her designee, without further action of the Parties, provided that the City, by action of the governing body during March of each year prior to the Annual Compensation Effective Date, may create an exception to the Base Compensation Increase, and further provided that the exception shall not reduce Briley's base compensation.

D. Upon the Effective Date, Briley will be paid a one-time only lump sum payment of \$2,867 for compensation deferred for the period April 1, 2018 through the date immediately prior to the Effective Date.

E. In addition to Section 4(C) of the Agreement, consideration shall be given on an annual basis to an increase in compensation. Increased compensation can be in the form of a base salary increase and/or performance incentive and/or an increase in benefits. The City shall provide confirmation of the recommended increase or incentive to Briley in writing upon appropriate motion or legislation of City Council.

F. At any time during the Term, the City may, in its discretion, review and adjust the salary of Briley, but in no event shall Briley be paid less than the salary set forth in Section 4(A) of the Agreement as adjusted by 4(B), 4(C), and 4(E) except by mutual written agreement between Briley and the City.

G. Except as otherwise provided in this Agreement, Briley shall be entitled, at a minimum, to the highest level of benefits enjoyed by and/or available to non-bargaining unit employees of the City as provided by the City's policies, Charter, ordinances, or personnel rules and regulations or other practices.

H. In considering compensation payable to Briley, at all times a reasonable differential shall be maintained between the compensation of Briley as city manager and that of other highest paid employees of the City.

I. Briley shall receive no additional compensation for hours worked in excess of normal working hours for City employees.

SECTION 5: HEALTH, DISABILITY AND LIFE INSURANCE BENEFITS

A. The City agrees to provide health, hospitalization, surgical, vision, dental and comprehensive medical insurance for Briley and her dependents, at a minimum, equal to that which is provided to all other non-bargaining unit employees of the City.

B. The City shall pay the amount of premium due for short term and long term disability coverage for Briley. If such coverage is not available through the City's insurance carrier or Briley elects to obtain coverage through a different insurance carrier, the City shall reimburse Briley for the cost of the premiums.

C. The City shall pay the amount of premium due for term life insurance in the amount of three (3) times Briley's annual base salary, including all increases in the base salary during the life of this agreement. If such coverage is not available through the City's insurance carrier or Briley elects to obtain coverage through a different insurance carrier, the City shall reimburse Briley for the cost of the premiums. Briley shall own the life insurance policy and the life insurance policy shall be in the name of Briley and Briley shall have the right to name the beneficiary of the life insurance policy.

SECTION 6: VACATION AND SICK LEAVE

A. Briley shall accrue sick leave and vacation leave on an annual basis, at a minimum, at the highest rate provided or available to non-bargaining unit employees regardless of tenure, under the same rules and provisions applicable to those employees.

SECTION 7: AUTOMOBILE

A. Briley's duties require exclusive and unrestricted use of an automobile to be mutually agreed upon and provided to Briley at the City's cost, subject to approval by the City which shall not be withheld without good cause. It shall be mutually agreed upon whether the vehicle is purchased by the City, provided under lease to the City or to Briley, or provided through a monthly allowance.

Monthly Allowance

B. If a car allowance is provided, during the term of this Agreement and in addition to other salary and benefits herein provided, the City agrees to pay to Briley the sum of \$4,800 per year, payable monthly, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. Briley shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The City shall reimburse Briley at the IRS standard mileage rate for any business use of the vehicle beyond the greater Cleveland area. For purposes of this Section, use of the car within the greater Cleveland area is defined as travel to locations within a 100 mile radius of the City's limits.

City Purchased or Leased Vehicle

C. The City shall be responsible for all costs associated with a City purchased or leased vehicle including paying for liability, property damage, and comprehensive insurance, and for the purchase (or lease), operation, maintenance, repair, and regular replacement of a full-size automobile.

SECTION 8: RETIREMENT

A. Briley shall be covered by the Ohio Public Employees Retirement System (OPERS). The City shall pay all required employer contributions for Briley's participation in OPERS and employee contributions shall be paid by Briley.

B. In addition to the City's payment to OPERS referenced above, the City agrees to keep in force all necessary agreements provided by ICMA Retirement Corporation (ICMA-RC) Section 457 deferred compensation plan for Briley's continued participation in said supplementary retirement plan. In addition to the base salary paid by the City to Briley, the City agrees to pay an amount equal to 8% of Briley's base salary on her behalf to her ICMA-RC Section 457 deferred compensation account in an equal proportionate amount each pay period. The City and Briley

shall fully disclose to each other the financial impact of any amendment to the terms of the Employee's retirement benefit.

C. In lieu of making a contribution to a Section 457 deferred compensation plan, the dollar value of this contribution may be used, at Briley's option, to purchase previous service from another qualified plan.

SECTION 9: GENERAL BUSINESS EXPENSES

A. City agrees to budget and pay for professional dues, including but not limited to the International City/ County Management Association, and subscriptions of Briley necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for Briley's continued professional participation, growth, and advancement, and for the good of the City.

B. City agrees to budget and pay for travel and subsistence expenses of Briley for professional and official travel, meetings, and occasions to adequately continue the professional development of Briley and to pursue necessary official functions for City, including but not limited to the ICMA Annual Conference, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees in which Briley serves as a member.

C. City also agrees to budget and pay for travel and subsistence expenses of Briley for short courses, institutes, and seminars that are necessary for Briley's professional development and for the good of the City.

D. City recognizes that certain expenses of a non-personal but job related nature are incurred by Briley, and agrees to reimburse or to pay said general expenses. Such expenses may include meals where City business is being discussed or conducted and participation in social events of various organizations when representing the City. Such expenditures are subject to annual budget constraints as well as state and City ethics and purchasing policies. The finance director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

E. The City acknowledges the value of having Briley participate and be directly involved in local civic clubs or organizations. Accordingly, City shall pay for the reasonable membership fees and/ or dues to enable Briley to become an active member in local civic clubs or organizations.

F. Recognizing the importance of constant communication and maximum productivity, the City agrees to pay, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$2,400 per year, payable monthly, as a general business expense allowance to provide for a laptop computer, software, internet connection at Briley's permanent residence, and tablet computer for business and personal use required for Briley to perform her duties and to maintain communication with City's staff and officials as well as other individuals who are doing business with City.

SECTION 10: TERMINATION

A. For the purpose of this Agreement, termination (“Termination”) shall occur when:

1. The majority of the governing body votes to terminate Briley in accordance with the City of Cleveland Heights Charter Article IV, Section IV-1 or similar Charter provision, as amended, at a properly posted and duly authorized public meeting.

2. If the City, the voters at a duly held election upon final certification of the election result as provided by law, or legislature amend(s) any provisions of the Charter or Codified Ordinances pertaining to the role, powers, duties, authority, responsibilities of Briley’s position that substantially changes the form of government, Briley shall have the right to declare that such amendments constitute Termination. Briley’s right to declare Termination shall commence upon the final action of the City, the final certification of the election result as provided by law, or the final action of the legislature, regardless of the later effective date, if any, of such amendment.

3. If the City reduces the base salary, compensation or any other financial benefit of Briley, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.

4. If Briley resigns following an offer to accept resignation, whether formal or informal, by the City acting through a representative of the majority of the governing body, then Briley may declare a termination as of the date of the offer.

5. Material breach of contract declared by either Party with a 30 day cure period for either Briley or City. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20.

6. Immediately upon Briley’s conviction of a felony or other offense that constitutes a material breach of this Agreement.

7. Briley resigns upon her own initiative.

SECTION 11: SEVERANCE

Severance pay as provided by this Section 11 (“Severance”) shall be paid to Briley when employment is Terminated as defined in Section 10, provided that Severance shall not be paid to Briley in the event of Termination of this Agreement as a result of a material breach of contract by Briley as set forth in Section 10(A)(5) above or in the event of a conviction by Briley as set forth in Section 10(A)(6) above or in the event of her resignation upon her own initiative as set forth in Section 10(A)(7) above. The Severance set forth herein shall constitute Briley’s full and complete remedy for Termination, and Briley expressly waives any additional remedy.

A. If this Agreement is Terminated pursuant to Section 10(A) (1), (2), (3), or (4) above, or if this Agreement is Terminated as a result of a material breach by the City pursuant to Section 10(A)(5)

above, the City shall provide a minimum guaranteed base salary severance payment equal to six (6) months' salary at Briley's current base salary as adjusted by the terms of this Agreement, commencing upon the date of Termination, to be extended until the earlier of (a) or (b): (a) one year from the date of Termination, or (b) the effective date of Briley's full time employment or full time contract engagement after the date of Termination. This base salary severance pay shall be paid in a lump sum or in a continuation of salary on the existing biweekly basis, at Briley's option. Briley's option to be paid in a lump sum applies only to the initial six (6) months' base salary. The extended base salary as set forth in (a) or (b) of this Section 11(A) shall be paid as continuation of salary.

B. Briley shall also be compensated for all sick leave, vacation leave, and all paid holidays earned during employment, including during a period of salary continuation pursuant to Section 11(A) above, if any.

C. The City agrees to make a contribution to Briley's deferred compensation account on the value of the compensation outlined in Sections 11(A) and 11(B) calculated using the current percentage determined in Section 8(B) of this Agreement. If the amount of the contribution under this Section exceeds the maximum dollar amount permissible under Federal and state law, the remainder shall be paid to Briley in a lump sum as taxable compensation.

D. For a guaranteed minimum period of six months commencing upon the date of Termination pursuant to Section 10(A)(1), (2), (3), or (4) or a material breach by the City pursuant to Section 10(A)(5) above, to be extended until the earlier of (a) or (b): (a) one year from the date of Termination, or (b) the effective date of Briley's full time employment or full time contract engagement after the date of Termination, the City shall pay the cost to continue the following benefits:

1. Health insurance in accordance with and subject to all processes, approvals, premium reimbursement, deductibles, and co-pays under the City's standard coverage for non-bargaining unit employees for Briley and all dependents as provided in Section 5(A), after which time, Briley will be provided access to health insurance pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA");
2. Short-term and long-term disability as provided in Section 5(B);
3. Life insurance as provided in Section 5(C);
4. Car allowance or payment of lease, or provide option to buy City's vehicle at depreciated value provided in Section 7;
5. Business expense allowance provided in Section 9;
6. Out placement services should Briley desire them in an amount not to exceed \$15,000; and
7. Any other benefits available to non-bargaining unit employees.

E. Other options may be agreed upon by the City and Briley.

SECTION 12: RESIGNATION

In the event that Briley voluntarily resigns her position with the City, Briley shall provide a minimum of 45 days' notice unless City and Briley agree otherwise.

SECTION 13: PERFORMANCE EVALUATION

[Intentionally blank and reserved.]

SECTION 14: HOURS OF WORK

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

The schedule shall be appropriate to the needs of the City and shall allow Briley to faithfully perform her assigned duties and responsibilities.

SECTION 15: ETHICAL COMMITMENTS

Briley shall at all times uphold the tenets of the ICMA Code of Ethics, a copy of which is attached hereto and incorporated herein, including but not limited to the prohibition against endorsing candidates, making financial contributions, signing or circulating petitions, or participating in fund-raising activities for individuals seeking or holding elected office, nor seeking or accepting any personal enrichment or profit derived from confidential information or misuse of public time.

The City shall support Briley in keeping these commitments by refraining from any order, direction or request that would require Briley to violate the ICMA Code of Ethics. Without limiting the foregoing, neither the governing body nor any individual member thereof shall request Briley to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fund-raising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality and merit.

SECTION 16: OUTSIDE ACTIVITIES

The employment provided for by this Agreement shall be Briley's primary full time employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the City and the community, Briley may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements must neither constitute interference with nor a conflict of interest with her responsibilities under this Agreement.

SECTION 17: INDEMNIFICATION AND PERSONAL LIABILITY UMBRELLA INSURANCE

To the extent permitted by Ohio Rev. Code Sec. 2744.07, City shall defend, save harmless, and indemnify Briley against any tort, professional liability claim, demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission in the performance of her duties as City Manager. City, or its insurance carrier, shall have the right to compromise and settle any such claim or suit and pay the entire amount of any settlement or judgment rendered thereon.

In the event Briley is required to be involved in litigation subsequent to the termination or expiration of this Agreement, as a party, witness or advisor to City, City agrees to pay all reasonable litigation expenses of Briley throughout the pendency of any such litigation, including reasonable consulting fees and travel expenses.

The City shall reimburse Briley for the annual cost of a personal liability umbrella policy in the amount of \$2 million dollars.

SECTION 18: BONDING AND PERSONAL LIABILITY UMBRELLA INSURANCE

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

SECTION 19: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

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

SECTION 20: NOTICES

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

(a) CITY: City of Cleveland Heights
Attn.: Clerk of City Council
40 Severance Circle
Cleveland Heights, Ohio 44118

With a copy to:

City of Cleveland Heights
Attn: Director of Law
40 Severance Circle
Cleveland Heights, OH 44118

(b) EMPLOYEE:

Tanisha R. Briley
3071 Coleridge Road
Cleveland Heights, Ohio 44118

Notice shall be deemed given as of the date of personal service or as 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 City and Briley relating to the employment of Briley by the City. Any prior discussions or representations by or between the City and Briley are merged into and rendered null and void by this Agreement. The City and Briley 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 City and Briley as well as her heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on August 12, 2019.

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 City and Briley subsequent to the expungement or judicial modification of the invalid provision.

E. Precedence. In the event of any conflict between the terms, conditions and provisions of this Agreement and the provisions of Council's policies, or City's ordinance or City's rules and regulations, or any permissive state or federal law, then, unless otherwise prohibited by law, the terms of this Agreement shall take precedence over contrary provisions of Council's policies, or City's ordinances, or City's rules and regulations or any such permissive law during the term of this Agreement.

F. Legal Counsel. Briley acknowledges and agrees that L. James Juliano, Jr., Director of Law of City, is and has been acting in this matter solely as legal counsel to the City Council and not to Briley in negotiating the Agreement. Briley acknowledges that she has been advised to seek the advice of legal counsel, that she has had ample opportunity to do so, that she has participated in the drafting of this Agreement, and that she has reviewed and understands each and every

provision of this Agreement.

IN WITNESS WHEREOF, the Parties have set their hands on the dates set forth below:

City of Cleveland Heights

Date: _____

By: _____

Carol Roe, Mayor

Employee

Date: _____

By: _____

Tanisha R. Briley

Approved as to form:

Director of Law

It is hereby certified that the amount required to meet the contract, agreement, obligation, payment, or expenditure for the attached agreement between Tanisha R. Briley and the City of Cleveland Heights has been lawfully appropriated for such purpose and is in the Treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

Director of Finance

Date: _____