
MEMORANDUM

RECEIVED

MAR 22 2012

TO: CITY COUNCIL
GREGORY J. ORAVEC, ACTING CITY MANAGER City Manager's Office

FROM: ROGER G. ORR, CITY ATTORNEY 

DATE: MARCH 22, 2012

SUBJECT: CITY MANAGER EMPLOYMENT AGREEMENT

Attached you will find a proposed employment agreement between the City of Port St. Lucie and Greg Oravec for the position of City Manager.

The contract was prepared based upon the template that is to be used for future employment agreements with senior city staff with some adjustments that are unique to the City Manager's position.

The agreement is for a two-year term that automatically renews if not terminated upon 90 days notice prior to the expiration date. The agreement provides that the employee is an at-will employee serving at the pleasure of the City Council and may be terminated with or without cause. If terminated without cause the City Manager will be entitled to severance compensation equivalent to five months' pay; however, if the agreement is cancelled for cause, the employee will not be entitled to severance.

Article X sets forth the salary of the employee which is the same as his existing salary as the assistant city manager, however it does provide for adjustments in the future upon the City providing across-the-board pay increases to its employees. The goal is that the City Manager's compensation will be comparable to the average of the annual salaries for city managers in Florida cities with populations of 100,000 to 180,000.

There is one unique provision that was discussed at the City Council meeting of March 19, 2011, whereby the City Manager will have a one-time additional allowance for annual leave. This is found in Article VIII where it provides that "the employee shall be credited with ten days of annual leave in addition to its existing accruals upon approval of this agreement." That is a one-time leave credit and would not repeat under this contract going forward.

I'd like to bring the Council's attention to Article XVI, Post-Employment Restrictions. This is an item that has been discussed from time to time in the recent past. This language will prohibit the employee from personally representing another person or entity for compensation before the City Council or any City Board or Commission for a period of two years following the employee's vacation of the office. This post-employee restriction does not apply to employees' representation of any not-for-profit entity serving the needs of the community as may be determined by the City Council. It also specifically provides that this

section shall survive the termination of the employee or cancellation of this agreement. I would expect enforcement of this provision to occur in two fashions. Probably the most effective enforcement mechanism would be for the City Council to decline consideration of any matter of being presented to them by the employee in violation of this section. The second enforcement mechanism would be injunctive relief. The expectation is that this paragraph or one very similar to it will be incorporated into our template for other city employees in the contract.

The contract is recommended for approval.

RGO/dmf

EMPLOYMENT AGREEMENT

THIS AGREEMENT effective the 26th day of March 2012, by and between the CITY OF PORT ST. LUCIE, hereinafter referred to as CITY, acting through the CITY COUNCIL, hereinafter referred to as, CITY COUNCIL, and **Gregory J. Oravec**, hereinafter referred to as EMPLOYEE, governs the terms and conditions of EMPLOYEE'S employment.

WHEREAS, CITY desires to retain the services of EMPLOYEE; and

WHEREAS, CITY agrees to employ EMPLOYEE and EMPLOYEE agrees to accept employment with CITY in the position of City Manager; and

WHEREAS, it is the desire of the CITY COUNCIL to establish terms and conditions of employment, and to codify working conditions of EMPLOYEE; and

NOW THEREFORE, in consideration of the mutual covenants herein contained, CITY and EMPLOYEE agree to the following:

I. DUTIES. The CITY agrees to employ EMPLOYEE and EMPLOYEE agrees to accept employment with the CITY in the position of City Manager. A job description for the position delineating specific job duties is attached hereto as Exhibit A and incorporated herein by this reference.

II. DURATION OF AGREEMENT.

A. EMPLOYEE shall serve at the pleasure of CITY COUNCIL

and shall be an at-will contractual employee of the CITY, and waives any rights to a pre or post disciplinary hearing in the event of discipline, including termination, except as provided by the Charter.

- B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of CITY COUNCIL to terminate the employment of EMPLOYEE at any time, subject only to the provisions set forth in Section XI and the Charter.
- C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of CITY COUNCIL to cancel this Agreement, subject only to the provisions set forth in Section III (B) or (C) and the Charter.
- D. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of EMPLOYEE to resign at any time, subject only to the provisions set forth in Section III (A).
- E. The duration of this Agreement shall be for a period of two (2) years, commencing the 26th day of March, 2012, until the 25th day of March, 2014.

F. Extension of Agreement. In the event either party to this Agreement does not give written notice to the other party at least ninety (90) days prior to the expiration date, this Agreement shall be extended for two (2) years on the same terms and conditions as set forth in this Agreement. Said Agreement shall continue thereafter for two-year periods, unless either party provides written notice to the other party at least ninety (90) days prior to the expiration date of the current period of the Agreement. In the event either party provides written notice at least ninety (90) days prior to the expiration date of the initial term or renewal, the Agreement will expire and EMPLOYEE shall only be compensated for eligible accrued benefits to date, based on the limitations and conditions detailed herein.

III. CANCELLATION OF AGREEMENT.

The parties agree that this Agreement may be canceled in one of the following ways:

A. EMPLOYEE may cancel this Agreement by providing at least 60-days written notice to CITY COUNCIL of EMPLOYEE'S voluntary resignation, unless the parties agree otherwise. A timely notice constitutes a "good standing" separation. EMPLOYEE acknowledges and understands that, in the event of voluntary resignation, EMPLOYEE is not entitled to any severance pay.

B. CITY COUNCIL may cancel this agreement in the event

EMPLOYEE abandons the position. A position is considered abandoned after unauthorized absences from work for a consecutive period of three (3) days. EMPLOYEE is not entitled to severance in the event of cancellation due to abandonment.

C. If EMPLOYEE is convicted of a misdemeanor involving moral turpitude or a felony violation of Florida or federal criminal law, such charges arising from events and prosecution occurring during the term of this Agreement, CITY COUNCIL shall have the option of canceling this Agreement without being obligated to pay any severance pay.

IV. TERMINATION OF EMPLOYMENT. CITY COUNCIL may, with or without cause, terminate the employment of the EMPLOYEE at any time. If the EMPLOYEE is terminated before the expiration of the Agreement as set forth in Section II (B), EMPLOYEE shall be entitled to severance pay as set forth in Section XI. EMPLOYEE shall also be compensated for all eligible accrued benefits to date, based on the limitations and conditions detailed herein.

V. PERFORMANCE CRITERIA AND EVALUATIONS.

A. At least annually, CITY COUNCIL shall meet with EMPLOYEE to establish performance standards, goals and criteria for a performance evaluation. Shortly before each annual anniversary date of this Agreement, CITY COUNCIL shall in accordance with criteria previously established, review and evaluate the performance of EMPLOYEE.

B. CITY COUNCIL shall provide EMPLOYEE with a written performance evaluation and provide an opportunity for EMPLOYEE to

discuss the contents thereof with CITY COUNCIL for the purpose of advancing the overall effectiveness of EMPLOYEE in his position.

C. CITY COUNCIL shall provide EMPLOYEE with written performance evaluations at the completion of the first 180 days of employment as City Manager.

VI. HEALTH, DISABILITY, AND LIFE INSURANCE.

A. CITY agrees to provide disability, accidental death and dismemberment, and life insurance for EMPLOYEE and to pay the premiums thereon equal to that which is provided to all other managerial CITY employees.

B. The CITY agrees to provide comprehensive health and hospitalization insurance coverage, which includes medical, dental, and vision insurance for EMPLOYEE and EMPLOYEE'S dependents (if eligible), provided EMPLOYEE pays the required contribution(s). Contributions, co-payments, and other fees shall reflect the rate(s) applicable to managerial CITY employees.

VII. SECONDARY EMPLOYMENT. EMPLOYEE agrees not to accept any other full-time employment. However, CITY COUNCIL agrees that EMPLOYEE shall be allowed to accept part-time employment such as the position of adjunct professor, and to accept normal compensation for such endeavors, provided such part-time employment shall be scheduled so as to not interfere with the normal operations of the CITY and shall require the prior approval of CITY COUNCIL.

VIII. SICK, ANNUAL, COMPENSATORY, BEREAVEMENT AND MILITARY

LEAVES, AND OTHER AUTHORIZED ABSENCES. (EMPLOYEE shall use original hire date of January 31, 2007 for all accruals).

SICK TIME. EMPLOYEE shall be granted ninety-six (96) hours sick time upon EMPLOYEE'S hire date and an additional ninety-six (96) hours sick time each year upon subsequent anniversary dates. Said sick time may only be used in accordance with the provisions outlined in the City's Personnel Rules and Regulations. Upon leaving CITY employment in good standing, EMPLOYEE shall be compensated for unused sick time, in accordance with the following:

Years Employed	Payment Percentage
5 - 9	50%
10 - 14	60%
15 - 19	75%
20 +	100%

Payments are limited to a maximum of one thousand forty (1,040) hours.

ANNUAL LEAVE. EMPLOYEE shall accrue annual leave on a bi-weekly basis as of their date of hire as follows:

Years Employed	Days Accrued Per Year
0-3	10
4-9	15
10-19	20
20 +	25

Annual leave may only be accrued to a maximum of two-hundred forty (240) regular hours. If EMPLOYEE leaves CITY employment after more than six (6) months of continuous employment, he shall receive payment for any accrued annual leave as of the date of separation. EMPLOYEE shall be credited with ten (10) days of annual leave, in addition to his existing accruals, upon approval of this Agreement.

COMPENSATORY TIME. EMPLOYEE shall be granted Forty (40) hours of compensatory time upon employment and upon each anniversary date. Said compensatory time may be used in addition to other approved leaves. No more than (40) hours per year may be utilized within any twelve-month period, namely the period commencing on January 1, 2012 and ending on December 31, 2012. Upon separation from employment with CITY for any reason, including but not limited to retirement, termination or cancellation of the Agreement, EMPLOYEE is not entitled to and will not receive payment for any unused compensatory time balance.

PERSONAL DAYS. EMPLOYEE shall be granted three (3) paid personal leave days upon employment and upon each anniversary date. Paid personal leave days may not be accrued from year to year. Personal days are not compensated upon separation from CITY employment.

BEREAVEMENT, MILITARY AND OTHER AUTHORIZED LEAVES/ABSENCES may be granted, pursuant to the City's Personnel Rules and Regulations, and in accordance with applicable law.

IX. RETIREMENT. The CITY agrees to pay an amount equal to ten and one-half (10.5%) percent of EMPLOYEE'S base pay into the ICMA Retirement Corporation 401(A) or 457 Account. Said contributions to coincide with EMPLOYEE'S bi-weekly salary payments as provided to all other managerial CITY employees.

X. SALARY/ALLOWANCES/COMPENSATORY LEAVE.

A. Starting salary shall be **Employee's existing salary of One Hundred Twenty One Thousand Five Hundred Dollars**

(\$121,500.00) per annum, payable in bi-weekly installments. EMPLOYEE shall be eligible for a salary adjustment upon the CITY providing an across the board pay increase to its employees and subject to Employee's performance evaluations. In establishing the Employee's salary adjustment, the CITY COUNCIL agrees that the EMPLOYEE'S adjusted pay shall be no less than the average of the annual salaries for city managers in Florida cities with a population of 100,000 to 180,000 or those other comparable cities as may be mutually agreed upon by the parties.

B. EMPLOYEE acknowledges that, pursuant to the Fair Labor Standards Act (FLSA), EMPLOYEE qualifies for the "EXECUTIVE" employee exemption. As an exempt employee, EMPLOYEE is paid a weekly salary, not subject to minimum wage or overtime provisions of the FLSA.

C. AUTOMOBILE EXPENSES. EMPLOYEE will receive mileage reimbursement for use of EMPLOYEE'S personal vehicle for local and out-of-area business travel at the CITY rate, which shall annually coincide with the Internal Revenue Service's standard mileage rate.

D. COMMUNICATION EXPENSES. CITY hereby agrees to provide EMPLOYEE a cellular telephone or similar device for use in the normal conduct of business, in accordance with CITY policy [OR] CITY hereby agrees to provide EMPLOYEE fifty (\$50) dollars per month, subject to all applicable payroll taxes, for the maintenance of a cellular telephone or similar device for use in the normal conduct of business, in accordance with City policy.

XI. SEVERANCE PAY. CITY COUNCIL shall grant EMPLOYEE five (5)

months' severance pay upon termination pursuant to Section IV.

XII. GENERAL EXPENSES. CITY recognizes that certain expenses of a non-personal and job-affiliated nature may be incurred by EMPLOYEE, and hereby agrees to reimburse or to pay said general expenses, subject to prior approval of the CITY COUNCIL and in accordance with CITY policy, and the Finance Director is hereby authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements, or personal affidavits.

XIII. CIVIC CLUB MEMBERSHIPS. CITY Council recognizes the desirability of representation in and before local civic and other organizations. EMPLOYEE shall present to CITY COUNCIL for its review and approval a listing of civic organizations for which, if approved, the CITY shall pay all expenses on EMPLOYEE's behalf.

XIV. DUES AND SUBSCRIPTIONS. The CITY agrees to budget and pay the professional dues and subscriptions of EMPLOYEE necessary for his continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for his continue participations, growth and advancement for the good of the CITY.

XV. EMPLOYEE HANDBOOK. Terms and conditions of EMPLOYEE'S employment not specifically set forth in this Agreement shall be governed by the City's Personnel Rules and Regulations for non-bargaining unit employees, provided said provisions are not inconsistent with or in conflict with the provisions of this Agreement, City Code of Ordinances and/or any law.

XVI. POST EMPLOYMENT RESTRICTION. EMPLOYEE shall not personally represent another person or entity for compensation before the CITY COUNCIL, or any CITY Board, or commission for a period of two (2) years following EMPLOYEE'S vacation of office or termination of employment. This post employment restriction shall not apply to EMPLOYEE'S representation of any not-for-profit entity servicing the needs of the community as may be determined by the CITY COUNCIL.

This section shall survive the termination of EMPLOYEE or cancellation of this Agreement.

XVII. MODIFICATIONS. No change or modification of this Agreement shall be valid unless it is reduced to writing and signed by both parties.

XVIII. GOVERNING LAW. This Agreement shall be construed and governed by the laws of the State of Florida, and venue for any proceedings brought hereon shall be in St. Lucie County, Florida.

XIX. SEVERABILITY OF PROVISIONS. If any clause or provision of this Agreement shall be determined to be illegal or to be void as against public policy, the remainder of this Agreement shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereunto have set their hands to this instrument this _____ day of _____ 2012.

Gregory J. Oravec, EMPLOYEE

JoAnn M. Faiella, Mayor

APPROVED AS TO FORM:

Roger G. Orr, City Attorney