COUNCIL ITEM 13K
DATE 8/13/12

MEMORANDUM

TO: MAYOR & CITY COUNCIL

FROM: GREGORY J. ORAVEC, CITY MANAGER

SUBJECT: EMPLOYMENT AGREEMENT WITH JOHN A. BOLDUC FOR THE POSITION OF POLICE CHIEF

DATE: AUGUST 8, 2012

In accordance with Section 32.71 of the Code of Ordinances, which sets forth City regulations concerning the Police Chief and is excerpted below for your reference, this memorandum serves to memorialize my appointment of Acting Police Chief John A. Bolduc as the City's next Police Chief and to recommend City Council approval of the attached employment agreement.

Sec. 32.71. - Police chief.

(a) The city manager shall hire or appoint a police chief, who shall have not less than the minimum qualifications and shall have the duties and responsibilities as set out below. The police chief shall be in charge of the police department, subject to the supervision of the city manager.

(b) The police chief shall have, at minimum, the requisite certification by the Florida Criminal Justice Standards and Training Commission (see especially F.S. § 943.13 for minimum standards of employment), and must have ten years of law enforcement experience, five of which must be in a supervisory capacity. The police chief must demonstrate an ability to make acceptable budgetary estimates for any project within the scope of his responsibilities, and possess the knowledge and skill for modern police work, including administration, which is indispensable to the efficient operation of a police department. The police chief shall be the accountable officer for all police department equipment and shall maintain proper inventories and property records.

(c) The police chief shall be paid a salary to be set each year by the city council upon the recommendation of the city manager, or in a contract of employment for term of years to be approved by the city council.

('78 Code, §§ 15.5-12—15.5-14; Ord. 80-13, passed 4-7-80)

The recommended agreement is based upon our typical department head agreement with only one notable change. Key elements of the agreement and the aforementioned change (noted by asterisk) are outlined below:

- The Police Chief is an at-will contractual employee.
- Start Date: August 14, 2012.
- Term: 2 years. Extensions are automatic unless one party notifies the other at least 90 days prior to the expiration date.
- Salary: $120,000. The median salary in our comparable jurisdiction study group is $136,805. The salary of our last police chief was $137,134.

- Severance Pay*: 5 months if terminated. Typically, severance is 3 months if terminated within first 2 years and 5 months if terminated after 2 years. However, Acting Chief Bolduc has already given many more than 2 years of service to the City. Given his length of service and the characteristics of the job, I believe 5 months is appropriate.

As you are aware, this appointment and proposed employment agreement follow Mr. Novick's rescission of his acceptance of the position. In the days following the announcement of Mr. Novick's rescission and my intent to appoint Acting Chief Bolduc, members of the community have shared their opinions on the matter through various mediums. It seems as though there are some who concur with my decision, some who would have me start a new national search process and some who would have me select another applicant from the last national search process. As with other issues, I greatly appreciate receiving input from all those concerned. However, in the end, I must fulfill my obligations under the Charter and Code of Ordinances and do what I think is right for our City. Please know that I believe that making Acting Chief Bolduc our next Police Chief is what's right.

When I originally took the reins as City Manager, I was convinced that I would have to go outside of the existing organization for a leader who had the objectivity and perspective necessary to effect significant positive change in the Police Department; but, as I came to learn in the intervening time period, we have such a leader in Mr. Bolduc. I have been evaluating him for the last four months; and in that time, he has demonstrated many important qualities, including: leadership; a commitment to ethics, the Golden Rule, hard work and team work; intelligence; resourcefulness; accountability; transparency; an ability to successfully manage and carry out positive change; the willingness to make tough decisions; and a passion for our community, organization and police department. Perhaps even more important than these laudable qualities though, I have watched him meet very difficult challenges with an indomitable character and a level of understanding which reveal he is ready to be our Chief. With this realization of what we have in Acting Chief Bolduc, I cannot advocate that we go outside of the existing organization for the next Chief or propose that we bear the additional time and expense of a new national search process. Furthermore, I do not believe the City would be well served by revisiting other candidates from the last national search. The value of these uncertain prospects does not equal or exceed what we have in hand. Though it had unexpected twists and turns, the completed national search served a purpose. It provided the opportunity to find the right person for the job and that person is John A. Bolduc.

If you have any questions or require additional information, please do not hesitate to contact me.

EMPLOYMENT AGREEMENT

THIS AGREEMENT, effective the 14th day of August, 2012 (the "Effective Date"), by and between the CITY OF PORT ST. LUCIE, hereinafter referred to as CITY, acting through Gregory J. Oravec, City Manager, hereinafter referred to as CM, and **John A. Bolduc**, hereinafter referred to as EMPLOYEE, governs the terms and conditions of EMPLOYEE'S employment.

WHEREAS, CITY desires to retain the services of an administrative officer to manage, direct, supervise and coordinate the activities of its Police Department; and

WHEREAS, CM desires to appoint a Police Chief; and

WHEREAS, CITY agrees to employ EMPLOYEE and EMPLOYEE agrees to accept employment with CITY in the position of **Police Chief**; and

WHEREAS, it is the desire of CM 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 as follows:

I. DUTIES.

A. A job description for the position delineating specific job duties is attached hereto as Exhibit A and incorporated herein by this reference.

B. CM agrees that the Police Chief shall be the chief administrative officer of the Police Department, subject to the supervision of the CM, pursuant to Section 32.71 of the Code of the City of Port. St. Lucie and Sections 4.01 and 4.04 of the City Charter.

II. DURATION OF AGREEMENT.

A. EMPLOYEE shall serve at the pleasure of CM 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.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of CM to terminate the employment of EMPLOYEE at any time, subject only to the provisions set forth in Section XI.

C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of CM to cancel this Agreement, subject only to the provisions set forth in Section III (B) and (C).

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 14th day of August, 2012, until the 14th day of August, 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 CM 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 a voluntary resignation, EMPLOYEE is not entitled to any severance pay.

B. CM 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 (or three (3) assigned shifts) occur. 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, CM shall have the option of canceling this Agreement without being obligated to pay any severance pay.

IV. TERMINATION OF EMPLOYMENT. CM 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, CM (or his designee) shall meet with EMPLOYEE to establish performance standards, departmental

goals and criteria for a performance evaluation. Shortly before each annual anniversary date of this Agreement, CM (or his designee) shall, in accordance with criteria previously established, review and evaluate the performance of EMPLOYEE.

B. CM (or his designee) shall provide EMPLOYEE with a written performance evaluation and provide an opportunity for EMPLOYEE to discuss the contents thereof with CM (or his designee) for the purpose of advancing the overall effectiveness of EMPLOYEE in his position.

C. CM (or his designee) may provide EMPLOYEE with periodic written performance evaluations during the first 180 days of employment as **Police Chief**.

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 CITY employees.

B. 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 CITY employees.

VII. SECONDARY EMPLOYMENT. EMPLOYEE agrees not to accept any other full-time employment. However, CM agrees that EMPLOYEE shall be allowed to accept part-time employment 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 written approval of CM.

VIII. SICK, ANNUAL, COMPENSATORY, PERSONAL, BEREAVEMENT AND MILITARY LEAVES, AND OTHER AUTHORIZED ABSENCES.

Note: "anniversary date," as referenced in this section, shall mean April 20.

SICK TIME. EMPLOYEE shall be granted ninety-six (96) hours sick time annually upon each anniversary date. 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 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 for any reason, he shall receive payment for any accrued annual leave as of the date of separation.

COMPENSATORY TIME. EMPLOYEE shall be granted forty (40) hours of compensatory time annually 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 April 20 and ending on April 19 the following year. Upon separation from employment with CITY for any reason, including but not limited to resignation, 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 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.

A. 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 **One Hundred and Twenty** thousand dollars ($ 120,000) per year, payable in bi-weekly installments. EMPLOYEE shall be eligible for, and/or subjected to, any budgeted salary adjustments, based upon annual performance reviews or for other legitimate reasons.

B. EMPLOYEE acknowledges that, pursuant to the Fair Labor Standards Act (FLSA), EMPLOYEE qualifies for the **"ADMINISTRATIVE,"** employee exemption. As an exempt employee, EMPLOYEE is paid a weekly salary, not subject to minimum wage or overtime provisions of the FLSA. As such, EMPLOYEE shall do all things necessary and required to be available to CITY during the term of this Agreement.

C. AUTOMOBILE EXPENSES. EMPLOYEE will receive a CITY-issued vehicle for local and out-of-area business travel.

The use of said vehicle shall be governed by Ordinance 79-27. EMPLOYEE will also 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 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. CM shall grant EMPLOYEE five (5) months' severance pay upon termination pursuant to Section IV.

XII. RESIDENCY. EMPLOYEE shall, throughout his tenure as Police Chief, maintain legal residency within the City Limits of Port St. Lucie.

XIII. GENERAL EXPENSES. CM 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 CM and in accordance with City policy. The Finance Director/City Treasurer is hereby authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements, or personal affidavits.

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

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 RESTRICTIONS. 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 separation of employment. However, this post employment restriction shall not apply to EMPLOYEE'S representation of a bargaining unit or any not- for-profit entity serving the needs to the community as may be determined by the CITY COUNCIL.

This section shall survive the termination of EMPLOYEE or cancellation or nonrenewal 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 3 day of August 2012.

John A. Bolduc, EMPLOYEE

Gregory J. Oravec,
City Manager

APPROVED AS TO FORM:

Milton R. Collins,
Assistant City Attorney