

MEMORANDUM

July 19, 2013

TO: Honorable Mayor and City Commissioners

VIA: Dorothy Ecklund, Interim City Manager

FROM: Sandra D. Davis, Human Resources Director
Albert C. Galloway, Jr., City Attorney

SUBJECT: City Manager Employment Agreement

SYNOPSIS: Staff is presenting the Employment Agreement between the City of Lake Wales and Kenneth Fields.

RECOMMENDATION

None.

BACKGROUND

This Employment Agreement is similar to the Agreements which have been in place for other City Managers.

There are changes to this Agreement which have been requested by the City Commission and by Mr. Fields during negotiations. Those changes are as follows:

1. The City agrees to pay Employee for services rendered, pursuant to this Agreement, an annual base salary of one hundred twenty five thousand dollars (\$125,000) per year payable in installments at the same time as other employees of the City are paid. The remuneration sought is less than the published range in salary. Mr. Fields has waived health insurance, which is the value of approximately \$6,000 annually.

2. The City further agrees to pay a sum equal to eight (8) percent of the annual base salary as "deferred compensation" which will be contributed to the Employee's Deferred Compensation Retirement Plan as provided for in paragraph 8 of this Agreement.

3. The City agrees to increase said base salary and/or other benefits of the Employee in the same manner as provided for other City employees or such other greater increase which the City Commission may deem appropriate.

4. The City shall furnish to Employee, during the term of his employment, an automobile allowance of three hundred dollars (\$300.00) per month. Employee shall be responsible for all costs of his automobile, including but not limited to, insurance, repairs, fuel, and all other costs incidental to the ownership and operation of an automobile.

5. The City shall furnish to Employee, during the term of his employment, an electronic access allowance of one hundred dollars per month (\$1,200 per year).

6. The City agrees to reimburse employee for moving and relocation expenses not to exceed \$2,750.

7. The City Manager will establish and continuously maintain a domicile in the City within 60 days of the Start Date of this Agreement.

8. The City Manager shall immediately accrue 5 days of vacation leave to coincide with the start date of the City Manager's services in order for the City Manager to transition from Boca Raton to Lake Wales.

FISCAL IMPACT

The costs for the City Manager's salary and benefits are provided for in FY 12'13 budget.

OTHER OPTIONS

Do not approve the Employment Agreement.

ATTACHMENTS

The Employment Agreement

EMPLOYMENT AGREEMENT
CITY MANAGER

This Employment Agreement (the "Agreement") is made and entered into this 19 day of July, 2013, between the City of Lake Wales, Florida, a Florida municipal corporation, (the "City") and Kenneth R. Fields ("Fields" or "City Manager").

RECITALS:

WHEREAS, Section 4.01 of the City Charter (the "Charter") requires that there shall be a City Manager, who shall be the Chief Administrative Officer of the City; and

WHEREAS, the City desires to employ the services of Fields as City Manager and Fields wishes to accept this employment.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement the parties agree as follows:

Section 1. Duties.

1.1 The City Manager shall have all powers and perform all duties and responsibilities required by this Agreement, prescribed in the Charter and applicable sections of the City Code.

1.2 The City Manager shall carry out the policy directives of the City Commission.

1.3 Upon request of the City Commission, the City Manager shall provide the City Commission with a report, which shall include a list of directives from the City Commission and the status of achievement of the same.

1.4 The City Manager shall perform such other duties as may be assigned by the City Commission from time to time.

Section 2. Salary.

2.1 The City Manager shall receive an initial annual salary in the amount of \$125,000.00 payable in equal installments in accordance with the City's existing pay periods. This salary shall be adjusted by the City Commission as specified in Section 3 of the Agreement.

2.2 For purposes of this Agreement, the City Manager's anniversary date shall be February 1 of each year.

Section 3. Performance Evaluations.

3.1 The City Commission shall evaluate the performance of the City Manager no later than 30 days after January 1, 2014. If the City Manager receives a positive evaluation from the City Commission, the City Manager may receive a salary adjustment or a bonus effective with his anniversary date. If the City Manager receives a negative evaluation, the City Manager shall receive no increase or bonus.

3.2 In addition to the evaluation specified in Section 3.1, the City Commission shall evaluate the performance of the City Manager at least once annually no later than 30 days prior to the City Manager's Anniversary Date. Based upon the results of the annual evaluation, the City Commission may, in its sole discretion, grant a salary increase and/or grant additional benefits to the City Manager effective with his anniversary date.

3.3 The evaluations specified in Sections 3.1 and 3.2 shall be based upon (i) the City Manager's performance of the duties specified in Section 1 and (ii) the City Manager's achievements of the City Commission's policy directives.

Section 4. Deferred Compensation/Insurance/Retirement Benefits/Life Insurance.

4.1 The City shall make a contribution into its 457 deferred compensation program in an amount equal to 8% of the City Manager's salary (the "Retirement Contribution. The Retirement Contribution shall be made coinciding with each City pay period. The City Manager shall be allowed to make such voluntary additional contributions to such a program up to the statutory limit. The City shall transfer ownership of its interest in the program upon the City Manager's resignation or termination.

4.2 The City shall make a contribution into its 401(a) retirement plan in the same amount as is contributed for General Employees. The City Manager shall make a contribution into the City's 401(a) retirement plan in an amount equal to 5.0% of the City Manager's salary. The Retirement Contribution shall be made in payments coinciding with each City pay period. The City's Retirement Contribution shall vest with the City Manager immediately.

4.3 The City Manager shall not receive the benefits currently provided to City employees for health insurance to include vision, dental insurance, as outlined in Section 2-223 of the City's Personnel' Policies.

4.4 The City shall provide the City Manager with a life insurance policy equal to the Manager's annual salary.

4.5 Should the City's Personnel Policies be amended by action of the City Commission, the City Manager's benefits listed in this Section shall be changed to match those benefits provided in the amended Personnel Policies, provided such changes do not result in a lesser benefit as is provided for under this Agreement.

Section 5. Professional Dues and Expenses.

5.1 The City shall pay for all reasonable and customary professional dues and subscriptions necessary for City Manager's participation in municipal associations including but not limited to the International City Management Association and Florida City and County Management Association, and other similar organizations, as approved in the City's annual budget.

5.2 The City shall pay for the City Manager's participation in those local civic and non-profit job-affiliated organizations that the City Manager is directed to participate in by the City Commission.

5.3 The City, through its Finance Director, shall pay non-personal job related expenses incurred by the City Manager, if incurred as part of his duties, and in accordance with applicable provisions of the Florida Statute. Such payments shall be made on a reimbursement basis, based upon submittal by the City Manager of actual receipts and expense vouchers.

Section 6. Automobile.

6.1 The City Manager shall receive a monthly automobile allowance of \$300.00 in recognition of his use of his personal automobile for City business.

Section 7. Residency /Relocation Expenses

7.1 The City Manager shall establish and continuously maintain a domicile in the City within 60 days of the Start Date of this Agreement.

7.2 The City Manager shall be paid a lump sum relocation allowance of \$2,750.00 immediately after 30 calendar days of service.

Section 8. Annual Leave, Sick Leave and Holidays.

8.1 The City Manager shall immediately accrue 5 days of vacation leave to coincide with the Start Date of the City Manager's services. Except as previously stated the City Manager shall annually receive vacation leave in accordance with City Personnel Policies.

8.2 The City Manager shall accrue sick leave at the rates established in the City's Personnel Policies.

8.3 The City Manager shall be entitled to the holidays listed in the City's Personnel Policies.

8.4 The City Manager shall not use more than five (5) consecutive business days of vacation leave without prior approval of the City Commission.

8.5 Annual leave shall accrue in accordance with City Personnel Policies. Upon termination, whether voluntary or involuntary, the City shall compensate the City Manager for accrued vacation and sick leave not taken based on the City Manager's salary at time of termination and in accordance with City Personnel Policies.

Section 9. Travel.

9.1 The City may pay for the reasonable and customary travel expenses of City Manager for meetings and seminars, including, but not limited to, the annual ICMA conference, the annual FCCMA conference, the Florida League of Cities and such other national, regional, state and local government groups and committees, as annually budgeted by the City Commission or as may be directed by the City Commission.

9.2 The City may pay for the reasonable and customary travel expenses of the City Manager to attend short courses, institutes and seminars that are necessary for his professional development and related to City issues.

Section 10. Electronic Access.

10.1 The City Manager shall provide and maintain a cellular telephone, a home computer and/or tablet, home and cellular internet access and such other electronic equipment as may be necessary for the City Manager to make himself available to perform his duties and to be able to maintain communications with the City's residents, the City Commission and staff at all times. The City shall accordingly provide the City Manager with a monthly electronic access allowance of one hundred dollars (\$100.00) in recognition of his use of his personal equipment for this purpose.

10.2 At the expiration of or termination of this Agreement, if the City has provided the City Manager with any electronic equipment as described in this section, he may purchase such equipment for its reasonable value as determined by the City's Finance Director.

Section 11. Days.

11.1 Unless otherwise specified, any reference to days in this Agreement shall mean calendar days.

Section 12. Bonds.

12.1 The City shall pay for the cost of any bonds for the City Manager required by Florida Law or the City Charter.

Section 13. Reduction of Compensation.

13.1 The City Commission shall not at any time during the term of this Agreement reduce the salary provided to the City Manager below the levels provided for in this Agreement.

13.2 The City Commission shall not at any time during the term of this Agreement reduce the benefits provided to the City Manager, except for any changes made to the City's Personnel Policies.

Section 14. Employment Exclusive.

14.1 The City Manager shall remain in the exclusive employ of the City and shall not accept any other employment during the Term of this Agreement without the prior approval of the City Commission.

Section 15. Term.

15.1 This Agreement shall commence on August 5, 2013, (the "Start Date") and continue through August 4, 2015 (the "Term"), unless terminated earlier as provided for in this Agreement.

15.2 180 days prior to the expiration of the Term of this Agreement, the City Commission and the City Manager shall meet to discuss the renegotiation or renewal of this Agreement if requested by either party. Such negotiations or renewal shall be completed no later than 90 days prior to the date of the expiration of the Term. The term of any renewal shall be for one year unless a different term is mutually agreed to by the City Commission and the City Manager.

Section 16. Termination.

16.1 In accordance with the Charter, the City Manager shall serve at the pleasure of the City Commission. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Commission to terminate the services of the City Manager at any time.

16.2 In the event the City Commission wishes to terminate City Manager, it shall do so in accordance with the provisions of Section 4.02 of the Charter.

16.3 In the event the City Manager is terminated prior to the expiration of the Term specified in Section 15.1, the City Manager shall receive severance payment as follows: (i) if terminated in the first 30 days from the Start Date, a severance payment equal to four (4) weeks salary, (ii) if terminated between the 31st and 365th day from the Start Date, a severance payment equal to twelve (12) weeks salary; (iii) if terminated on or after the 366th day from the Start Date, twenty (20) weeks salary. For purposes of this Section, "severance payment" shall be based upon the salary specified in Section 2.1 in effect on the date of termination. Severance under this paragraph shall include payment of those benefits listed in Sections 4, 6, 8 and 10 coinciding with the corresponding length of severance pay. All severance payments shall be paid to City Manager in a lump sum upon his termination or within fifteen (15) days thereafter at the City Commission's option.

16.4 Notwithstanding the provisions of Section 16.3, in the event City Manager is terminated for cause, the City shall have no obligation to pay City Manager any severance payments. For the purposes of this Section “for cause” shall be defined as: (i) breach of any material term or condition of this Agreement, (ii) violation of any applicable laws or codes, (iii) misconduct, (iv) gross insubordination (v) willful neglect of duty or (vi) violation of the Florida Code of Ethics for Public Officers and Employees.

16.5 Upon payment of the severance payment specified in Section 16.3, or upon termination as provided for in Sections 16.4, 16.7 or 16.8 or resignation as provided for in Section 16.7, the City shall have no further financial obligations to City Manager. The severance payment shall constitute agreed, stipulated, and liquidated damages and constitute the maximum amount of financial liability for which the City may be liable in the event of termination or breach of contract.

16.6 In the event that the City Manager voluntarily resigns during the Term of this Agreement, the City Manager shall provide the City with 30 days advance written notice, unless the parties agree in writing to a different period of time. In the event of resignation by the City Manager under this Section, the City Manager shall not be entitled to receive the severance package specified in Section 16.3, but shall receive any unpaid vacation and sick leave in accordance with the the City Personnel Policies.

16.7 In the event that the City Manager voluntarily resigns with less than 30 days advance written notice, the City Commission may elect to terminate the City Manager immediately or allow the City Manager to continue to serve until the date specified in the City Manager’s resignation. In the event of a resignation or termination under this paragraph, notwithstanding any other provisions of this Section, the City Manager shall not be entitled to receive severance payment, vacation or sick leave unless the City Commission authorizes payment of the same.

16.8 If the City Manager is unable for a consecutive period of 60 days to perform his duties as specified in Section 1 of this Agreement due to disability, sickness, accident, or injury , as certified by a physician, this Agreement shall be deemed terminated. In the event of the City Manager’s death, this Agreement shall be deemed terminated. If the Agreement is terminated under this Section, the severance payment specified in Section 16.3 shall not be applicable.

16.9 Unless otherwise specified in this Agreement, upon termination or expiration of this Agreement, the City Manager or his beneficiary, shall be entitled to receive payment of any accrued and unused sick or vacation leave in accordance with the procedures specified in the City’s Personnel Policies_or any amendments thereto. If the City Manager is terminated for cause, sick leave shall not be paid.

Section 17. Conflict of Interest Prohibition.

17.1 City Manager shall not without the express prior approval of the City Commission, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City, except

for stock ownership in any company whose capital stock is publicly held and regularly traded.

17.2 The City Manager shall abide by the provisions of Chapter 112, Florida Statutes, the Code of Ethics for Public Officers and Employees and the City's adopted Code of Ethics.

Section 18. Miscellaneous Provisions.

18.1 Complete Agreement. It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreement, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

18.2 Amendment. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and with equal dignity herewith.

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

18.4 No Waiver. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

18.5 Non-Assignment. The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by the City Manager.

18.6 Governing Law. Florida law shall govern this Agreement and any litigation which may arise from this Agreement shall be filed and litigated in the Circuit Court in and for Polk County, Florida, if in Federal Court, in the Central District of Florida.

18.7 Waiver of Jury Trial. Both the City and the City Manager knowingly, voluntarily, and irrevocably waive their right to a trial by jury in any civil proceedings that may be initiated by either party with respect to any term or condition of this Agreement.

18.8 Notice. Notice to either party shall be deemed given if sent by certified mail, return receipt requested, by recognized public or private postal facilities, by hand delivery or delivered at a City Commission meeting. Notice shall be sent as follows:

For the City: Eugene Fultz, Mayor or his Successor
City of Lake Wales
201 West Central Avenue
P.O. Box 1320
Lake Wales, FL 33859-1320

Telephone: (863) 678-4182
Facsimile: (863) 678-4180

With a copy to:

Albert C. Galloway, Jr. City Attorney
202 East Stuart Avenue
P.O. Box 3339
Lake Wales, FL 33859-3339
Telephone (863) 679-5333
Facsimile: (863) 679-5332

For the City Manager:

Kenneth R. Fields, City Manager
City of Lake Wales
201 West Central Avenue
Lake Wales, FL 33853
Telephone: (863) 678-4182
Facsimile: (863) 678-4180

IN WITNESS WHEREOF, the City, by signature of the Mayor as authorized by Commission Resolution on _____, 2013, and City Manager have signed and executed this Agreement the day and year first above written.

City of Lake Wales

ATTEST:

By: _____
Eugene Fultz, Mayor

Clara VanBlargan, City Clerk

Approved as to form and legal sufficiency
for the use of the City Commission only:

City Attorney

City Manager

Kenneth R. Fields