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**CITY COMMISSION
SPECIAL MEETING
CITY OF ST. PETE BEACH**
155 Corey Avenue

Tuesday, October 21, 2014
2:00 PM

Call to Order
Pledge of Allegiance
Roll Call

1. Action Items

- a. Approval of Employment Agreement for City Manager with Mr. Wayne Saunders**
- b. Discussion of the Commission's options for next steps in light of the Second District Court of Appeal's decision in Anderson v. City of St. Pete Beach, Appeal Case No. 2D12-5969.**

2. Adjournment

APPEAL

If a person decides to appeal any decision made at this meeting, they will need a record of the proceeding and, for such purpose, may need to ensure that a verbatim record of the meeting is made, which record includes the testimony and evidence upon which the appeal is to be based. (F.S. 286.0105) The City does not furnish verbatim transcripts; interested parties should make the necessary arrangements for verbatim transcripts.

AMERICAN DISABILITIES ACT

In Accordance with the American's with Disabilities Act and F.S. 286.26, persons with disabilities needing special accommodations to participate in this meeting should contact City Hall at (727) 367-2735 no later than (4) days prior to the meeting for assistance.

The public is cordially invited to attend. All agenda material is available for review at City Hall.

**St. Pete Beach City Commission
Agenda Report**

Issue Considered: Approval of Employment Agreement for City Manager with Mr. Wayne Saunders

Date: October 21, 2014

Prepared By: Elaine Edmunds, Interim City Manager

Summary of Issue: On October 14th the City Commission authorized City Attorney Dickman to negotiate an Employment Agreement with Mr. Wayne Saunders for the position of City Manager. The Agreement presented to you is the result of these negotiations.

Requested Motion: “I move to approve the Employment Agreement for City Manager with Wayne Saunders

Attachments: Draft contract

CITY MANAGER EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into on the _____ day of October, 2014 ("Effective Date"), by and between the City of St. Pete Beach, Florida, a Florida municipal corporation, (the "City") and Wayne Saunders, an individual, ("Employee") pursuant to the following terms and conditions:

WITNESSETH:

WHEREAS, the City desires to employ the services of Employee as City Manager as provided by Sec. 3.09 and Article IV of St. Pete Beach City Charter ("City Charter"); and

WHEREAS, the City desires to provide certain benefits and to establish certain conditions of Employee's employment; and

WHEREAS, Employee desires to accept employment as City Manager.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

SECTION 1: DUTIES

A. The City hereby appoints Employee as its City Manager to exercise the executive responsibilities and duties as prescribed by the City Charter and City Code, and to perform all other legally permissible and proper duties and functions as the City Commission may from time to time assign. Employee agrees to accept the appointment as City Manager and agrees to exercise his best efforts in performing said duties.

B. Pursuant to Sec. 4.03 of the City Charter, in the event the City Manager is temporarily unable to perform his duties, he shall designate and Acting City Manager.

SECTION 2: TERM OF AGREEMENT

A. Employee's appointment as City Manager shall begin on November 10, 2014 and continue until November 11, 2017 ("Initial Term") subject to Sections 3, 4, 5, and 6 of this Agreement.

B. In the event sixty (60) days' written notice is not given by either party to this Agreement to the other prior to the expiration of the Initial Term, this Agreement shall be automatically extended on the same terms and conditions as herein provided for an additional period of one (1) year (each additional one year period shall be referred to as a "Renewal Term"). Said Agreement shall continue thereafter for periods of one (1) year unless either party hereto gives

written notice sixty (60) days' prior to the expiration of the applicable Renewal Term. Upon mutual written agreement of both parties, the length of the Renewal Term(s) may be modified.

SECTION 3: TERMINATION AND SEVERANCE PAY

A. Pursuant to Sec. 3.09 and Article IV of the City Charter, Employee serves at the pleasure and discretion of the City Commission. This Agreement may be terminated at any time without cause by the City. Employee recognizes and acknowledges that he is an employee at will, he has no property right in the position of City Manager, and that this Agreement provides any and all remedies available to Employee in the event it is terminated.

B. In the event the City terminates Employee prior to the expiration of the Initial Term and during such time as Employee is willing and able to perform the duties of City Manager, Employee shall be entitled to receive his then current salary and benefits ("Severance Pay") for Twenty (20) weeks immediately after his termination. However, if Employee is terminated for misconduct as defined in Section 443.036(29), Florida Statutes, as may be amended from time to time, Employee shall not receive any Severance Pay. For purposes of this Section, salary means the actual or constructive compensation for employment services yet to be rendered but does not include earned and accrued annual, sick, compensatory, or administrative leave. Benefits includes all benefits described in Section 10 below but shall not include contributions to the 401a plan referenced in Section 10 below.

C. In addition to the above, this Agreement may be terminated upon the following conditions:

- (1) If Employee is convicted of a felony.
- (2) If Employee fails to perform the duties required under and pursuant to the provisions of this Agreement.
- (3) If City and Employee shall mutually agree in writing to such termination through a resignation.
- (4) In the event of disability as provided in Section 5 of the Agreement.
- (5) At the City Commission's option to terminate in accord with the provisions of Sec. 4.02 (b) of the City Charter.

D. In the event City elects not to renew this Agreement at the end of the Initial Term, or any Renewal Term thereafter, Employee shall be entitled to Severance Pay for Twenty (20) weeks following the expiration of the applicable Initial Term or Renewal Term, except and unless this Agreement is not renewed for Employee's misconduct as definite in Section 443.036(29), Florida Statutes, as may be amended from time to time and Sec. 3(C) above.

E. If Employee is terminated by the City and Employee is entitled to Severance Pay under this Section, Employee shall execute a general and full release, releasing the City, its officials, officers, employees, attorneys and agents from any and all obligations, claims, or liabilities arising out of Employee's employment with the City, including but not limited to claims for wrongful termination, discrimination of any kind and defamation. If Employee refuses to execute said release, the City may seek specific performance of this Agreement and injunctive relief requiring Employee to sign said release, amongst its available remedies. Said release shall not release the City from its obligations to indemnify Employee under Section 14.

F. Should the City Charter be amended to provide for an elected executive rather than the presently appointed City Manager, then Employee may, at his option, by written notice to the City Commission within fifteen (15) days of the effective date of such City Charter amendment, notify the City Commission that he has elected to consider his employment to have been terminated as of the date the elected executive takes office. Employee shall be entitled to Severance Pay for Twenty (20) weeks immediately following the date the elected executive takes office.

G. This Agreement and therefore, Employee's appointment, shall terminate immediately upon the conviction of Employee of a felony or crime involving moral turpitude or dishonesty; upon a finding that Employee committed an ethical violation by a court, administrative proceeding, the State of Florida Ethics Commission, or other body or court of competent jurisdiction; or upon other actions constituting gross misfeasance, malfeasance, gross incompetence, or illegal act involving personal gain in conjunction with Employee's position as City manager. In the event this Agreement terminates as a result of this provision, Employee shall not be entitled to any Severance Pay as provided in this Section.

SECTION 4: RESIGNATION

In the event Employee voluntarily resigns his position with the City, Employee shall give the City one hundred and twenty (120) days' prior written notice. Employee shall not be entitled to any Severance Pay.

SECTION 5: DISABILITY

If Employee is unable to perform his duties for any reason excluding death, including, but not limited to, sickness, accident, injury, or mental incapacity for a period of four (4) successive weeks beyond any accrued leave, the City may terminate this Agreement. In the event this Agreement is terminated pursuant to this Section, the City shall pay Employee all accrued compensation and benefits due Employee under this Agreement within ten (10) working days of such termination. Employee shall not be entitled to any Severance Pay. The City shall have no other liability to the Employee, her estate, heirs, or beneficiaries.

SECTION 6: DEATH

This Agreement shall be terminated by the death of the Employee as of the date of death. In the event of the Employee's death, the City shall pay a designated beneficiary of the Employee or his estate all accrued compensation and benefits due Employee under this Agreement within ten (10) working days of the Employee's death. Employee's beneficiaries or estate shall not be entitled to Severance Pay. The City shall have no other liability to the Employee, his estate, heirs, or beneficiaries.

SECTION 7: SALARY

A. The City agrees to pay Employee for his services as City Manager an annual salary of One Hundred Thirty Five thousand U.S. Dollars and 00/100 (\$135,000.00), which shall be paid on a pro-rata basis, payable on a bi-weekly pay schedule, as is applicable to all other City employees. Employee shall be entitled to an increase in compensation as determined by the City Commission upon each yearly anniversary date of this Agreement as a result of a performance evaluation administered by the City Commission. Such evaluation shall be in accordance with criteria established between the City and Employee, and such criteria shall be based upon the description of the City Manager's responsibilities in the City Charter, City Code, and directives and guidelines established by the City Commission. The City Commission shall review Employee's performance evaluation and determine Employee's increase, if any, no later than November 9th of each year during the Initial Term and any Renewal Term. Any approved increase shall be effective as of the Employee's yearly anniversary date.

B. In addition to the base salary set forth in Section 7(A) above, Employee shall be paid a monthly automobile allowance of Five Hundred U.S. Dollars and 00/100 (\$500.00) per month. Such automobile allowance amount may be increased by the City Commission and any such increase shall be evidenced by mutual written consent and appended to this Agreement.

SECTION 8: CELL PHONE REIMBURSEMENT

The City agrees to provide Employee with a choice of either a cellular telephone to aid in performance of his duties as City Manager, or provide Employee a cell phone allowance of Fifty U.S. Dollars and 00/100 (\$50.00) per month.

SECTION 9: VACATION, SICK, AND PERSONAL LEAVE

Employee shall be entitled to paid time off (PTO) and holidays. Employee will begin employment with an automatic Twenty Six (26) PTO days. Each year thereafter upon his anniversary hiring date Twenty six (26) PTO days will be awarded. Upon termination of this Agreement, Employee shall be paid 100% of all unused PTO and holidays. All annual leave must be used within Twenty Four (24) months of its accrual. Employee may have no more than a maximum accrual of Three Hundred Sixty (360) PTO hours on September 30th of each year.

SECTION 10: BENEFITS

- A. Employee shall be entitled to any benefits, including health and life insurance coverage, afforded to other employees of the City. Said coverage shall commence with the execution of this Agreement and as allowed under the City's agreement with its insurance providers. Further, City agrees that Employee will be covered by health and life insurance coverage, effective the first day of his employment.
- B. Employee has selected to opt out the City's group health insurance and shall be paid the standard annual compensation rate set by the City, which is currently Two Thousand Five Hundred Eighty Four US Dollars and 66/100 cents (\$2,584.66). Employee is still entitled to City dental insurance.
- C. The City shall provide Employee with short term disability income insurance and shall pay the premium cost for such insurance.
- D. City agrees to execute all necessary documents provided by the International City Management Association-Retirement Corporation (ICMA-RC) for Employee's continued participation in said ICMA-RC 401A and 457 retirement plans, or any other deferred compensation plan of the Employee's choice. In addition to the base salary paid by the City to the Employee, the City agrees to pay, on behalf of the Employee, an amount equal to Fifteen percent (15%) of the Employee's base salary into the selected retirement plan, in equal proportionate amounts each pay period. Contributions provided for herein shall be One Hundred percent (100%) vested upon payment by the City. In the event Employee terminated his employment, the City shall execute whatever documents are authorized under the retirement plan to allow for Employee's continued participation in the plan.

SECTION 11: PROFESSIONAL DEVELOPMENT

- A. City agrees to budget and pay for the reasonable professional dues and subscriptions necessary for Employee's continuation in national, state and local professional organizations necessary and desirable for his continued professional participation and growth and for the good of the City including, but not limited to, the International City/County Management Association (ICMA), Florida City and County Management Association (FCCMA), and Florida Government Finance Officers Association.
- B. City hereby agrees to budget and to pay the program cost, travel and subsistence expenses of Employee for reasonable professional and official travel, meetings, and occasions adequate to continue the professional development of the Employee and to pursue necessary official functions of the City including, but not limited to, attendance at the annual and other short courses and seminars, such as the ICMA Annual Conference, the Florida City Managers and County Association's Annual Conference (FCCMA), and Florida League of Cities meetings and conferences.

SECTION 12: HOURS OF WORK

It is recognized that the Employee will often be required to devote considerably more hours to his position than other employees, and that the Employee will devote a great deal of time outside the normal hours of business toward the business affairs of the City. Working hours will be flexible to accommodate the requirements and practices of the City Manager position, but generally Employee shall work during normal City business hours, excluding City recognized holidays, vacation leave or other leave in accordance with this Agreement or the applicable City policy. The concept of "overtime" is not applicable to the position of City Manager. No compensation shall be paid for overtime and compensatory time off will not be a matter of right based upon particular evening requirements or demanding projects. However, occasional time away from the office will be recognized as consistent with the nature of the professional position.

SECTION 13: OUTSIDE ACTIVITIES

The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the City and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute either interference with or a conflict of interest with his or her responsibilities under this Agreement.

SECTION 14: PERFORMANCE EVALUATION

A. City Commission shall review and evaluate the performance of the City Manager at least once annually. Said review and evaluation shall be in accordance with specific criteria developed jointly by the City Commission and Employee. Said criteria may be added to or deleted from as the City Commission may, from time to time, determine in consultation with the Employee. Further, the Mayor shall provide the Employee with a written summary statement of the findings of the Commission and provide and adequate opportunity for the Employee to discuss his evaluation with the Commission.

B. Annually, the Commission and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City and in the attainment of the Commission's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives shall be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

SECTION 15: INDEMNIFICATION AND INSURANCE

A. Subject to the provisions of insurance defense insurance coverage, and consistent with federal, state or local law, City shall defend, save harmless and indemnify Employee acting within the scope of his employment, against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of Employee's duties as city manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton misconduct or performed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The Employee may request and the City shall not unreasonably refuse to provide independent legal representation at City's expense and City may not unreasonably withhold approval. Legal representation, provided by City for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The City shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties. Any settlement of any claim must be made with prior approval of the City in order for indemnification, as provided in this Section, to be available. Employee recognizes that City shall have the sole right to compromise or settle any suit without the Employee's consent; unless said compromise settlement does not also include the individual liability of the Employee as a name party to the suit as indemnified herein. Further, City agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the City. Such expense payments shall continue beyond Employee's service to the City as long as litigation is pending. Further, City agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as witness, advisor or consultant to City regarding pending litigation.

B. The City will procure and maintain professional liability and errors and omissions insurance coverage on Employee, covering acts or omissions occurring in the performance of Employee's duties as City Manager. Such coverage may not cover acts or omissions performed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Said insurance policies shall carry limits of liability as the City may set and determine from time to time.

SECTION 16: BONDING

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

SECTION 17: MOVING EXPENSES

Employee shall pay all costs of moving. The City agrees to pay Two Thousand U.S. Dollars and 00/100 (\$2,000.00) per month for up to Two (2) months toward temporary, rental housing for Employee. Such temporary housing stipend shall cease immediately upon Employee's establishment of a permanent housing, or the expiration of the Two (2) month period, whichever occurs sooner.

SECTION 18: GENERAL PROVISIONS

A. The text herein shall constitute the entire agreement between the parties. This Agreement may only be amended in writing signed by both parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators and executors of the Employee.

C. If any provision or any portion thereof contained in this Agreement is held unconstitutional, illegal, invalid, or unenforceable, by a court of competent jurisdiction, such part shall be considered separate and severable from the rest of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

D. Notice required or given pursuant to this Agreement shall be given by certified mail through United States Postal Service delivery, return receipt request addressed as follows:

CITY: Mayor and City Council
City of St. Pete Beach
155 Corey Avenue
St. Pete Beach, FL 33706

EMPLOYEE: Wayne Saunders
City Manager

Either party may change the address stated herein for purposes of notice by giving written notice to the other party in accordance with the requirements of this section.

E. The City Commission, in consultation with Employee shall set any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict

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

F. Except as otherwise provided in this Agreement, all provisions of the City Charter, and regulations and rules of the City relating to vacation and other leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of the City, in addition to said benefits enumerated specifically for the benefit of the Employee, except as herein provided.

G. The waiver by either party of a breach of any provision of this Agreement by the other shall only be valid if set forth in writing signed by the waiving party and shall not operate or be construed as a waiver of any subsequent breach by that party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the Effective Date.

ATTEST:

Rebecca C. Haynes, City Clerk

CITY OF ST. PETE BEACH:

Mayor Marie Lowe

EMPLOYEE:

Wayne Saunders

Approved as to form:

City Attorney