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Legistar No. _____

Phone: 334-5011/Fax 334-2229
Box 46

MEMORANDUM

Office of the City Attorney

TO: Mayor and City Commission

FROM: City Attorney

SUBJECT: CITY MANAGER EMPLOYMENT CONTRACT

DATE: August 22, 2005
CONSENT

Recommendation: The City Commission (1) approve the employment of Mr. Russ Blackburn as City Manager pursuant to the terms and conditions set forth in the attached Employment Agreement, and (2) authorize the Mayor to execute the Agreement on behalf of the City and the Clerk to attest thereto.

At its meeting of August 8, 2005, the City Commission authorized Mayor Hanrahan to negotiate an employment agreement with Mr. Russ Blackburn, consistent with the "form" agreement utilized with other Charter Officers.

The attached Employment Agreement follows the format of the recently approved/amended agreements with, for example, the City Auditor and City Clerk. In addition, examples of "cause" for denial of severance are included in 4B. Minor changes related to initial accrual of paid time off (3D) and disability benefits (8B) are based upon Mr. Blackburn's status as a new employee of the City.

Prepared by: _____

Charles L. Hauck,
Sr. Assistant City Attorney

Approved and
Submitted by: _____

Marion J. Radson,
City Attorney

MJR:CLH:sw

EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2005, by and between the City of Gainesville, Florida, hereinafter called the "City," and Russ Blackburn, hereinafter also called "City Manager," both of whom understand as follows:

WITNESSETH:

WHEREAS, Russ Blackburn is qualified and competent to serve as the City Manager, and is ready, willing and able to perform the duties of City Manager consistent with the following terms and conditions; and

WHEREAS, Russ Blackburn and the City of Gainesville feel it would be mutually beneficial to enter into a contract of employment setting forth agreements and understandings which:

1. provide inducement for the City Manager to accept such employment with the City;
2. make possible full work productivity by assurances to the City Manager with respect to future security;
3. establish the basis, framework and contest for the relationship which shall exist between the City and the City Manager; and
4. provide a just means of terminating the City Manager's services at such time as the City Commission may desire to terminate such employment;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Duties.

The City Commission hereby agrees to employ Russ Blackburn as the City Manager of the City of Gainesville to perform duties and functions of said position as specified in the City Charter, Code of Ordinances, and job description, if any, and such other lawful duties as the City Commission may from time to time assign the City Manager.

Section 2. Term.

This Agreement shall be of a continuing nature, provided, however, that:

A. The City Manager shall hold office at the will of the City Commission, and 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, subject only to the provisions set forth in Section 4 of this Agreement.

B. Nothing in this Agreement shall prevent, limit, or interfere with the right of the City Manager to resign at any time from his position with the City, subject only to the provisions set forth in Section 4 of this Agreement.

C. The City Manager shall report for duty as City Manager for the City of Gainesville on September 6, 2005, which date shall be the City Manager's leave progression date for the purposes of computing benefits.

Section 3. Salary and Related Matters.

A. The City Agrees to pay the City Manager, for his services rendered pursuant hereto, an annual base salary of \$155,000.00, payable in installments at the same time as other employees of the City are paid. The City Manager's performance, salary and benefits shall be reviewed every year by the City Commission, at a time

coinciding with the City Manager's salary anniversary date (September 6, 2005). The Performance Review procedures should be established prior to his review. Future salary increases will become effective on the City Manager's salary anniversary date.

B. The City shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of the City Manager, provided such terms and conditions are not inconsistent with the provisions of this Agreement, the City Charter, or any other law.

C. All provisions of the City Charter and the Code, and regulations and rules of the City relating to fringe benefits and working conditions as they now exist or hereafter may be amended, including without limitation, health insurance and disability retirement benefits, also shall apply to the City Manager as they would to other management employees of the City hired on September 6, 2005, except as herein provided.

D. The City Manager shall be entitled to the rights described in said Personnel Policy 8 except as modified as follows. Upon commencement of employment, the City Manager shall receive 82.24 hours of PTO. Beginning with the ninth (9th) pay period after commencement of employment, the City Manager shall accrue PTO at the rate of 10 hours 28 minutes per pay period or the rate of accrual per pay period applicable to City Manager's leave progression date, whichever is greater. The maximum number of PTO hours that can be accrued (carryover cap) is 372 hours, adjusted as otherwise provided in Policy 8. The City Manager is not eligible to earn administrative leave.

Upon termination of employment, unused and accrued PCLB is forfeited and not compensable under any circumstances, except pension credited service, if applicable unless otherwise generally allowed for management employees of the City hired on City Manager's leave progression date.

E. The City Manager shall have the option of utilizing either the City's contractual medical provider or his personal physician for a yearly physical exam and EKG, provided that, in the later case, the monetary exposure for the City shall not exceed \$250. If a personal physician is utilized, City Manager will be required to submit any bills for the services provided through any available insurance coverage before requesting reimbursement from the City for non-covered deductibles or co-insurance payments. The scope of the examination will be that of a "Type A" physical examination as described in the City's contract with Family Practice Medical Group or an examination of a similar scope with any successor provider. Services provided by a personal physician other than those listed under Type A above shall not be subject to reimbursement under this paragraph.

F. The amount of Term Life Insurance provided for the City Manager is two (2) times the salary of the City Manager to a maximum of \$100,000, unless a higher amount is generally provided for management employees of the City hired on or about the City Manager's leave progression date. The parties understand that in accordance with law, a portion of said term life insurance may constitute a taxable benefit to the City Manager.

Section 4. Termination and Severance Pay

A. In the event the City Manager's employment is terminated by virtue of his resignation, he shall inform the City Commission in writing and shall give the City Commission two (2) months written notice in advance, unless the parties otherwise agree.

B. In the event the City Manager is terminated for cause as so stated, by at least four (4) members of the City Commission, at the time of termination, the City shall have no obligation to provide any severance pay, but accrued and unused PTO shall be paid for. It is understood and agreed that the City Commission will be the sole judge as to the effectiveness and efficiency with which the City Manager performs his employment, and whether cause exists for the termination of such. By way of illustration, but not limitation, the following are some examples of situations the parties agree could reasonably be deemed "cause" warranting denial of severance pay: gross negligence in the handling of City affairs; willful violation of the provisions of law; willfully disregarding a direct order or demand of the City Commission or a policy of the City; conduct unbecoming a City Manager; pleading guilty or *nolo contendere* to, or being found guilty by a jury or court of a misdemeanor involving physical violence, theft, driving under the influence of alcohol or drugs or possession or sale of drugs or a felony, regardless of whether or not adjudication is withheld and probation imposed.

C. In the event the City Manager's employment is terminated under any other circumstances during such time as the City Manager is willing and able to perform the duties of City Manager, then the City Manager shall be entitled to severance pay in the following amounts, less appropriate deductions for federal withholding and other

applicable taxes. If such termination occurs during the first year of employment as City Manager (i.e. before September 6, 2006), the City agrees to pay employee an amount equal to 12 weeks salary; if such termination occurs during the second year of such employment, the City agrees to pay employee an amount equal to 17 weeks salary; if such termination occurs during the third year of such employment, the City agrees to pay employee an amount equal to 21 weeks salary; if such termination occurs during the fourth year and thereafter of such employment, the City agrees to pay employee an amount equal to 26 weeks salary.

D. If termination of employment occurs under any other circumstance, i.e., death or disability, the City may consider paying Employee, effective the last day of his employment, an amount, less appropriate deductions for federal withholding and other appropriate taxes up to a maximum of twelve (12) weeks salary at his current rate of pay, in addition to any accrued and unused PTO and any other benefits to which he is entitled.

Section 5. Dues and Subscriptions

The City agrees to pay for the professional dues and subscriptions of the City Manager necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of the City. The total expenditure for dues and subscriptions may be limited by the amount specifically approved and appropriated in the City's Annual Financial and Operating Plan Budget.

Section 6. Bonding

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

Section 7. Vehicle

The City agrees to provide the City Manager the option of choosing either a City-provided vehicle for his use in performing the duties of his employment and for commuting and de minimus personal use or a \$450 monthly car allowance.

Section 8. Retirement

A. The City agrees to execute all necessary agreements provided by the International City Management Association Retirement Corporation or similar City approved providers for participation in any such retirement plans sponsored by the City. The City Manager will decide the percentage of his base salary that he desires to have contributed/deferred to such plans and the City will implement his decision to the extent allowed by law by, among other things, deducting appropriate equal proportionate amounts each pay period. The City agrees to transfer ownership to succeeding employers upon the City Manager's termination, if such is in accordance with the plan provisions and legal requirements in effect at that time.

B. Upon commencement of employment, the City Manager shall be eligible for benefits under the City of Gainesville Employees' Disability Plan in accordance with its terms. In addition, upon the City Manager's enrollment, and during the first 12 months of employment, the City will provide for payment of premiums for a short-term disability policy offered under the employee benefits program, providing for payments of \$5,000 per month, 30 days after commencement of illness or accident.

Section 9. Relocation and Temporary Housing Expenses

A. After securing competitive bids or quotes, the City shall pay directly to a qualified, licensed and insured carrier or company, or reimburse the City Manager at his option for the expenses of packing and moving the City Manager, his family, and the personal property from Palm City, Florida to his chosen residence in the City of Gainesville, Florida. Allowable costs shall include packing, unpacking, transport, insurance and any temporary storage costs necessary. Said payment will be based on actual expenditures, reimbursable for a period of 18 months from the City Manager's employment start date.

B. The City shall provide funds for three trips and associated costs of the Employee and his dependents to and from Palm City, Florida, to the City of Gainesville on a direct reimbursement basis, such costs whether incurred before or after the execution of this Agreement.

Section 10. General Provisions

A. The text herein shall constitute the entire Agreement between the parties.

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

C. Except as otherwise provided herein, the terms and conditions of employment described in this Agreement shall be effective September 6, 2005.

IN WITNESS WHEREOF, the City has caused this Employment Agreement to be signed and executed on its behalf by its Mayor, and duly attested to by its Clerk of the

Commission, and the City Manager has signed and executed this Employment Agreement, both in duplicate on the respective dates under each signature.

CITY OF GAINESVILLE

ATTEST:

PEGEEN HANRAHAN, MAYOR

DATE: _____

By: _____

KURT M. LANNON
CLERK OF THE COMMISSION

RUSS BLACKBURN, CITY MANAGER

DATE: _____