

RESOLUTION 2012-45

**A RESOLUTION OF THE CITY COMMISSION OF THE  
CITY OF WAUCHULA, FLORIDA PROVIDING FOR  
APPROVAL OF THE EMPLOYMENT AGREEMENT  
WITH CITY MANAGER, TERRY W. ATCHLEY; AND  
PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on August 31, 2004, the citizens of the City of Wauchula, Florida, (hereinafter the "City"), approved Amended Charter 2004, (hereinafter the "2004 Charter"), and

**WHEREAS**, Article III of the 2004 Charter provides for a change in the form of government for the City to a "Commission-Manager Government"; and

**WHEREAS**, Article IV of the 2004 Charter provides for the appointment of a city manager, who is to serve as the chief administrative officer of the City; and

**WHEREAS**, after duly publishing notice of the city manager position locally, in professional journals and over the internet, the City Commission (the "Commission") of the City, received and reviewed resumes, and interviewed candidates; and

**WHEREAS**, by Resolution 2011-29, the Commission selected Terry W. Atchley (hereinafter "Atchley"), as the best candidate for the position of City Manager, and approved an Employment Agreement with a duration from October 1, 2011, to September 30, 2012; and

**WHEREAS**, the Commission desires to employ the services of Atchley as City Manager of the City for the period from October 1, 2012, to September 30, 2013; and

**WHEREAS**, Atchley desires to be employed as City Manager of the City for the period from October 1, 2012, to September 30, 2013; and

**WHEREAS**, in the exercise of its authority, the Commission has determined that it is in the best interest of the public health, safety and general welfare of the City and its residents to approve the Employment Agreement with Atchley for the period from October 1, 2012, to September 30, 2013.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF WAUCHULA, FLORIDA, THAT:**

1. The Employment Agreement by and between the City and Atchley, a copy of which is attached hereto and made a part hereof by this reference, shall be and is hereby approved.
2. This Resolution shall be effective immediately upon its adoption by the Commission.

On Motion of Detwiler, seconded by G. Smith, the above resolution was introduced and approved by the City Commission of the City of Wauchula, Florida, on the 13th day of November, 2012.

(SEAL)

ATTEST:

CITY OF WAUCHULA

Holly D. Smith  
Holly D. Smith, City Clerk

By: Richard Keith Nadaskay, Jr.  
Richard Keith Nadaskay, Jr., Mayor

APPROVED AS TO FORM:

By: Clifford M. Ables, III  
Clifford M. Ables, III, City Attorney

## EMPLOYMENT AGREEMENT

**THIS EMPLOYMENT AGREEMENT** (hereinafter "Agreement"), made and entered into this 1<sup>st</sup> day of October 2012, by and between the City of Wauchula, State of Florida, a municipal corporation (hereinafter called "Employer" or "City"), and Terry W. Atchley (hereinafter called "Employee"), both of whom agree as follows:

### WITNESSETH:

**WHEREAS**, Employer desires to employ the services of Terry W. Atchley as City Manager of the City of Wauchula, Florida, as provided by the Charter of the City of Wauchula and this Agreement; and

**WHEREAS**, the Employee desires to agree to be employed as City Manager of the City of Wauchula, Hardee County, Florida.

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

### SECTION 1. EMPLOYMENT AND DUTIES

- A.** The City hereby agrees to employ Employee as City Manager and Employee agrees to accept such employment, all subject to the terms and conditions set forth in this Agreement. Unless otherwise provided herein, the Employee shall devote his full time as City Manager and carry out to the best of his ability all duties imposed on him by the City Charter, City Ordinances as they now exist, or from time to time may be changed by the City of Wauchula, and such other duties as the City Commission may from time to time require of him. Employee will be in active charge of the day-to-day management and operation of the City, including the hiring, supervision, evaluation and discipline of all City Employees subject to the applicable laws of the United States, the State of Florida, the Charter, Ordinances, Policies and Procedures of the City now in existence or as subsequently adopted, altered or amended by the City.
- B.** Nothing herein will limit Employee's right to make passive investments, to participate in charitable service and organizations, other community activities and trade and professional organizations or to undertake other activities which in the sole judgment of the City do not interfere with the performance of his duties hereunder, it being mutually agreed that his participation in charitable service, other community activities, and trade and professional organizations is to the benefit of the City. Employee

shall not otherwise be employed on a full or part-time basis without the written permission of the City Commission.

- C. Employee shall be “on-call” 24 hours a day and agrees to make himself available as needed. It is recognized that Employee’s duties as City Manager require a great deal of time outside of normal office hours. It is also recognized that Employee is required to devote an unspecified amount of time and energy to carry out those duties with the highest amount of professionalism possible and that because of the “24-hour” nature of his responsibilities, interference with his private life is to be expected. That being the case, the parties recognize that Employee may choose to take occasional personal time off within the general area of the City of Wauchula during the City’s normal business hours, when his duties allow and his absence will not interfere with the efficient operation of City business; provided, however, that he is at all times immediately available by telephone or beeper, except during periods of illness, vacation and absences approved by the Mayor, or his designee. This time off is not considered vacation or compensatory time. Employee agrees that at all times, including personal time as set forth herein, he will conduct himself in a professional manner and not bring discredit to the City or to the operation of its business. The City will consider Employee’s use of personal time off during its annual performance evaluation of him.

**SECTION 2. TERM**

- A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate the services of the Employee at any time as Employee is employed at the will and pleasure of the City.
- B. The Employer shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of the Agreement, the City Charter or any other law.
- C. In the event of termination of Employee by Employer, Section 4 shall apply. In the event of resignation by Employee, Sections 4 and 14 shall apply.

**SECTION 3. SUSPENSION AND EVALUATION**

Employee shall be supervised, subject to disciplinary action and evaluated by the City Commission, or its designee. The primary contact for the Employee for necessary coordination of the activities of his office and the operation of the City shall be the Mayor, or the absence of the Mayor, the Vice Mayor; provided, this may be changed at the discretion of the Commission.

**SECTION 4. TERMINATION, NOTICE AND SEVERANCE**

**A. Resignation:** Should Employee resign his employment, Employee shall receive no severance pay or benefits under this Agreement except those, if any, required by applicable law.

**B. Termination by the City:**

1. This Agreement may be terminated at any time at the will and pleasure of the City Commission.
2. Except as provided in paragraph 4(B)(3) below, and subject to subparagraphs 4(B)(2)(c) and (f) below, if Employee is involuntarily terminated during the term of this Agreement he shall be paid severance pay under the conditions set forth in subparagraphs 4(B)(2)(a), (d) and (f) below. A vote by a majority of the City Commission to offer Employee the opportunity to voluntarily resign in lieu of involuntary termination shall be considered an involuntary termination.

(a) Severance shall be twenty (20) weeks of the Employee's base salary; provided, however, there shall be no severance due in cases of termination consistent with Section 4(B)(3), or voluntary termination.

(b) The City shall continue to provide Employee group medical insurance during the period Employee receives severance under paragraph 4(B), just as if he had remained actively employed during the period he receives severance, but subject to the conditions set forth in subparagraph 4(B)(2)(d) below.

(c) Employee complies with paragraphs 12(B) through 12(D) of this Agreement (Confidentiality and Cooperation).

(d) Subject to applicable law, the City shall no longer be obligated:

(1) to pay Employee severance pay under Section 4(B)(2)(a) above once Employee obtains employment elsewhere;

(2) to provide Group Medical Insurance under subparagraph 4(B)(2)(b) above once Employee has obtained employment with another employer who offers group medical insurance for which Employee meets that employer's eligibility requirements (and assuming any waiting periods have passed) or after the period during

which Employee receives severance pay from the City, whichever first occurs.

(e) Upon termination of this Agreement, neither Employee nor the City shall have any obligation one to the other except as set forth in Paragraph 12(B) through 12(D), for accrued benefits, if any, to which Employee is entitled, if any, except as provided under the City Personnel Rules and Regulations applicable to him as an involuntarily terminated Employee, or as otherwise provided in this Agreement.

(f) Employee shall execute a release of all officers, directors, members, City Commission members, Employees and representatives of any and all rights he/she has, had or may have arising out of his employment or the cessation thereof with the City under this Agreement or otherwise and all applicable federal, state and local laws, including but not limited to claims of illegal discrimination, intentional and unintentional torts and all other types of claims whether known or unknown through the date of his termination.

3. The City shall have no obligation to pay any severance or to provide Employee Group Medical Insurance under paragraph 4(B)(2) hereunder or otherwise unless otherwise required by law if Employee is terminated for any one or a combination of the following reasons:

(a) Dishonesty with respect to the business and operation of the City.

(b) Violation of the City drug policy.

(c) Failure to fully and truthfully cooperate in a legal investigation involving any aspect of the business or operation of the City conducted by or at the direction of the City Commission.

(d) Conviction or pleading guilty or nolo contendere to a felony.

(e) Causing the City to be found in violation of law through gross neglect or willful or intentional conduct by Employee.

Except as may otherwise be required by the City Charter, in the event Employee is charged with a felony or crime involving moral turpitude, the City shall have no obligation to pay Employee under paragraph 4(B)(2) unless and until a judgment of acquittal is entered by the Court.

## **SECTION 5. SALARY/PERFORMANCE EVALUATION**

- A. The Employer agrees to pay Employee for his services rendered pursuant hereto an annual base salary of seventy seven thousand five hundred eighty four dollars (\$77,584.00), payable in bi-weekly installments.
- B. Employer shall review Employee's performance on or before October 1, 2013, for consideration of a performance bonus based on the work performed during the past year. The amount shall be the sole judgment of the City Commission and in no event shall be in excess of eight percent (8%) percent of Employee's base annual salary. Such bonus, if any, shall be paid on or before October 14, 2013 in one lump sum less taxes. The standards for receipt of a bonus will be based upon the overall rating of the job performance of the Employee for the last 12 months as follows:

<u>Overall Job Performance Rating</u>	<u>Performance Bonus</u>
Not Satisfactory	0
Needs Improvement	0
Satisfactory/Meets Expectations	Up to 4%
Better than Satisfactory/Exceeds Expectations	Up to 6%
Outstanding	Up to 8%

- C. Employer will evaluate Employee annually. The Employee shall be entitled to discuss the evaluation with individual members of the Commission.
- D. Employer may otherwise evaluate Employee as it deems appropriate.

**SECTION 6. AUTOMOBILE AND CELLULAR PHONE**

- A. **Vehicle.** Employer agrees to pay Employee, during the term of this Agreement, and in addition to other salary and benefits provided, the sum of three hundred dollars (\$300.00) per month as a vehicle allowance to be used to provide a vehicle which he will use in conducting business for Employer. Employee shall be responsible for liability, property damage and comprehensive insurance coverage upon such vehicle and shall be further be responsible for all expenses attendant to said vehicle. Employee shall provide insurance for said vehicle as required by the City. Employer shall reimburse Employee for any City business use outside Hardee County, Florida at the mileage rate it reimburses other general employees for City business use of their personal vehicle.
- 2. Employee shall immediately report to the Mayor and Human Resource Director any accident in which the vehicle is involved while being used to conduct City business.

3. Employee shall provide a vehicle for his use in conducting City business that is in clean and presentable condition at all times.
4. Employee will not allow anyone other than himself or an employee of the City to drive said vehicle for City business.

**B. Equipment.** The Employer shall provide Employee with sixty five dollars (\$65.00) a month for Employee to provide a cell phone for his use for City business. Employee shall keep all Commissioners, Department Heads, City Attorney and City Clerk advised as to this cell phone number. Employee shall be available on said cell phone for City business related calls on a 24/7 basis.

#### **SECTION 7. VACATION**

Upon commencement of employment, Employee will accrue paid vacation under the City Personnel Rules and Regulations (hereinafter "PRR") as they exist just as if he had completed ten (10) years of continuous service as a City Employee.

#### **SECTION 8. SICK LEAVE**

Section 18 of Employer's PRR, or any later Section or policy relating to Sick Leave adopted by Employer, shall apply to Employee except Employee may use accrued sick leave immediately upon its accrual and Section 18.03 shall not apply.

#### **SECTION 9. DISABILITY, HEALTH, DENTAL AND LIFE INSURANCE**

- A.** Employee shall participate in the Employer's group medical, vision, dental, supplemental Term Life/AD&D and Term Life/AD&D insurance programs which are available to all other general Employees of the Employer to the same extent and under the same conditions as apply to full-time general Employees.
- B.** Effective the first day of employment, the Employer shall enroll the Employee in the Employer's health care program; or, pay COBRA for the Employee until such time the Employee becomes eligible for participation in the Employer's program.

#### **SECTION 10. RETIREMENT**

Employee shall participate in Employer's retirement plan for general Employees to the same extent and under the same conditions as all full-time regular general Employees of Employer.

#### **SECTION 11. PROFESSIONAL DEVELOPMENT**

- A. Dues and Subscriptions:** The City agrees to pay for the professional dues and subscriptions the Mayor approves in advance as reasonably

necessary and desirable for Employee's continuation and full participation in national, regional, state and local associations and organizations and his development and growth as a manager of the business of the City.

Additionally, the City shall pay for memberships on behalf of the Employee, which the City Commission, in its exclusive discretion, approves in advance.

**B. Conventions:**

(1) Employer hereby agrees to budget and to pay the registration fees, travel and subsistence consistent with subparagraph (3) below for attendance by Employee as a member in good standing to the annual meeting or convention of the Florida League of Cities and the Florida City and County Managers Association.

(2) Additionally, the City shall pay for all other meetings, seminars and short courses attended by the Employee, which the City Commission, in its exclusive discretion approves in advance, and will reimburse expenses in accordance with City policy.

(3) All other expenses shall be reimbursed in accordance with the City policy applicable to all Employees.

**SECTION 12. INDEMNIFICATION AND COOPERATION**

- A. The City shall defend, hold harmless and indemnify Employee in accordance with applicable law.
- B. In the event of actual or threatened litigation and/or administrative proceedings involving the City which arise out of the operation or actions which occurred or are alleged to have occurred while Employee was the City Manager of the City of Wauchula, Employee will cooperate with the City and its counsel in assisting the City in every legal manner to prevail in said action. The City shall pay Employee's reasonable travel expenses and subsistence expenses incurred away from his home incurred in preparation for and actual discovery, settlement and trial of all said matters.
- C. Employee further agrees that unless required by law, he will not cooperate with or assist any party, person, or entity who has, had or may have, or asserts that he has or may have any claim or any nature against the City, its agents, officers, Employees, City Commission members or representatives, without the express written permission of the City Commission, or its designee.
- D. Employee shall not disclose any confidential information involving the business of the City to any person or entity without the written permission of the City Commission, or its designee, unless required to do so by law.

- E. Restrictions set forth in subparagraphs C and D above shall not apply in instances of governmental entities with jurisdiction over a claim of a violation of law.
- F. The commitments made in Section 12(B), (C), (D) and (E) above shall survive the termination of this Agreement and be enforceable by the City so long as the law allows.

**SECTION 13. MISCELLANEOUS**

- A. The City Personnel Rules and Regulations as they now exist or as they may be later modified by the City shall apply to Employee except:
  - 1. When inconsistent with this Agreement or the City Charter.
  - 2. Sections 12, 13 and 14 or any successor Sections or policies relating to discipline and appeals shall not apply to Employee.
- B. The Mayor, or his designee, shall be the Commission Member with whom Employee shall coordinate contact between the City Commission and his office with respect to off duty time.
- C. Employee shall live within the City limits of the City of Wauchula and maintain residence within the corporate boundaries of the City so long as he is the City Manager.
- D. This Agreement shall be interpreted, construed and governed according to the laws of the State of Florida. In the event of litigation to enforce this Agreement, the prevailing party shall be entitled a reasonable attorney's fees and costs in addition to any other relief to which the prevailing party is entitled in accordance with applicable law.
- E. No amendment or variation of the terms and conditions of this Agreement shall be valid unless in writing and signed by the parties.
- F. The Employee's rights and obligations under this Agreement are personal and are not assignable; provided, however, in the event of Employee's death any accumulated but unused benefits to which an Employee's heirs and executors are entitled under the City Personnel Rules and Regulations shall inure to the benefits of Employee's heirs and executors to the same extent as all other City Employees.
- G. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- H. This Agreement supersedes any and all other understandings or agreements, whether written or oral, and constitutes the complete and full agreement between the parties, and may be modified only by the written agreement of Employee and the City Commission.

- I. All statutory deductions and other deductions authorized by Employee shall be deducted from salary, bonuses and other compensation set forth in this Agreement.

**SECTION 14. NOTICE AND CONSENT**

Any written or other notice required by this Agreement shall be deemed delivered as follows:

- A. As to the City, when delivered by personal service to the City Clerk at the City Administration Building during the regular business hours of the City, or by Certified or Registered mail to the City Clerk at the City Administration Building, said delivery to be verified by an executed Certified or Registered mail receipt, signed by the City Clerk or the City Clerk's designee.
- B. As to Employee, by personal service to him or via Certified or Registered mail to him at the most recent mailing address set forth in the City's personnel records.

**SECTION 15 DURATION**

This Agreement shall commence October 1, 2012 and shall terminate at 11:59 p.m. September 30, 2013 unless earlier terminated as permitted by this Agreement, or renewed by mutual agreement of the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first above written.

**EMPLOYER:  
CITY OF WAUCHULA, FLORIDA**

Attest: Holly Smith  
Holly Smith, City Clerk

By: Richard K. Nadaskay  
Richard K. Nadaskay, Mayor

**EMPLOYEE:**  
By: Terry W. Atchley  
Terry W. Atchley

**APPROVED AS TO FORM AND LEGALITY**

By: Clifford M. Ables, III  
Clifford M. Ables, III, City Attorney

Approved by the Wauchula City Commission at a regular meeting held on  
November 13, 2012.