

City of La Quinta

CITY COUNCIL MEETING: July 21, 2015

STAFF REPORT

AGENDA TITLE: APPROVE EMPLOYMENT AGREEMENT FOR FRANK J. SPEVACEK, CITY MANAGER

RECOMMENDATION

Approve the Employment Agreement for Frank J. Spevacek to serve as City Manager for the term commencing June 4, 2015 through June 3, 2018.

EXECUTIVE SUMMARY

- Effective June 4, 2012, the current City Manager, Frank J. Spevacek, was appointed by the City Council to serve in that capacity for a three-year term.
- After completing the City Manager's performance evaluation last month, the City Attorney was directed to prepare a new Employment Agreement ("Agreement") for the City Manager (Attachment 1).

FISCAL IMPACT

Base annual salary is \$200,000, plus "performance-based compensation" authorized by City Council, in its discretion and as prescribed in the Agreement, not to exceed \$10,000 annually.

BACKGROUND/ANALYSIS

Effective June 4, 2012, Frank J. Spevacek was appointed to serve as City Manager for a three-year term. The then-applicable agreement had standard terms and conditions, including job duties, base pay, work hours, specified leave, and severance compensation. Effective July 1, 2014, City Council amended the agreement, increasing the annual base salary from \$195,000 to \$198,900 and annual administrative leave from 80 hours to 120 hours. Administrative leave is in addition to the City Manager's accrued 104 hours of vacation.

The proposed Agreement is for another 3-year term, commencing June 4, 2015. It generally has the same terms and conditions from the prior agreement, as amended, with minor modifications to severance pay (deletion of a 12-month severance pay provision no longer applicable) and to base pay (rounding-up from \$198,900 to \$200,000). The only substantive modification from the prior agreement is the addition of "performance-based compensation" whereby the City Council, in its discretion, may authorize an additional payment of up to 5 percent of base salary, but never to exceed \$10,000 annually, if the City Manager meets City Council's expectations on the "Performance-Based Compensation Metrics," as described in the Agreement.

ALTERNATIVES

The City Council may direct the City Attorney to revise provisions or may reject the proposed Employment Agreement. If no agreement is approved, there will be no operative agreement for city manager services.

Report prepared and approved by: William H. Ihrke, City Attorney

Attachment: 1. Agreement

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "Agreement") is made and entered as of July 21, 2015 (the "Effective Date"), by and between the City of La Quinta, a public body (the "City" or "Employer"), and Frank J. Spevacek, an individual (the "Employee"), both of whom understand as follows:

WITNESSETH:

WHEREAS, the City desires to employ the services of Employee as the City Manager as provided by the La Quinta Municipal Code; and

WHEREAS, it is the desire of the City to establish certain conditions of employment and to set working conditions of said Employee; and

WHEREAS, Employee desires to accept employment as City Manager of said City.

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

Section 1. Duties.

A. Employer hereby agrees to employ Employee as City Manager of said City to perform the functions and duties specified in the La Quinta Municipal Code and as provided by state and federal law and to perform other legally permissible and proper duties and functions as the City Council shall from time to time assign.

B. Employee, with prior written approval of the City Council, may undertake outside professional activities for compensation, including teaching, speaking and writing, provided they do not interfere with Employee's normal duties and are done only during vacation or other non-working time of Employee and are not done with any existing vendors or contractors of the City. Under no circumstances shall such outside activity create a conflict of interest with the duties of the City Manager and the interests of the City.

Section 2. Term.

A. The term of this Agreement shall be from June 4, 2015 through and including June 3, 2018, unless earlier terminated as provided herein. Thereafter, the parties may renew the Agreement pursuant to their mutual agreement.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council acting for the City to terminate the services of Employee

at any time, with or without cause, subject only to the provisions set forth in Section 4, paragraphs A, B and D of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with Employer, subject only to the provision set forth in Section 4, Paragraph E, of this Agreement.

Section 3. Administrative Leave with Pay.

Employer may place Employee on Administrative Leave with full pay and benefits at any time during the term of this Agreement. However, if the purpose of placing Employee on Administrative Leave With Pay is to conduct an investigation into potential wrongdoing, and after that investigation, Employee is convicted of a crime involving abuse of his/her office or position, then pursuant to Government Code Section 53243, Employee shall be required to fully reimburse City for any salary or benefits received while on Administrative Leave With Pay. "Abuse of office or position" shall be as defined in Government Code Section 53243.4, as may be amended.

Section 4. Termination and Severance Pay.

A. In the event Employee is terminated by the City Council during such time that Employee is willing and able to perform his/her duties under this Agreement, then Employer agrees to pay Employee a lump sum cash payment equal to either six months' salary or the salary for the remaining term of this Agreement, whichever is less. Pursuant to Government Code Section 53243.5, if Employee is later convicted of a crime involving abuse of office or position, then any severance paid under this Section 4.A shall be returned by Employee to Employer.

B. Employee may be terminated at any time for willful misconduct as defined in Section 2.08.160 of the City's Municipal Code or for abuse of his/her office or position as defined in Government Code Section 53243.4 as may be amended. The determination of what constitutes willful misconduct shall be within the sole discretion of the City Council, provided that it shall relate to the welfare of the City. Willful misconduct includes conduct directly related to conduct in office and the duties of the office. It also includes conduct not directly related to the performance of the official duties of the office when such conduct has a direct and harmful effect on the welfare or reputation of the City. Evidence of such direct and harmful effects includes, but is not limited to, conviction of a felony or a crime of moral turpitude. Employee shall be entitled to the right to a hearing as provided in Sections 2.08.100 through 2.08.150 of the Municipal Code prior to termination under Sections 4.A and 4.B of this Agreement. In the event that Employee is terminated for willful misconduct or abuse of office or position, City shall have no obligation to pay

and shall be prohibited from paying, the severance sum designated in Section 4.A above, or any severance sum at all.

C. Nothing in this Agreement shall prohibit Employer from imposing discipline less than termination upon Employee, including written reprimands, suspensions, or reductions in pay. Employee shall not be entitled to any due process as a result of the implementation of discipline less than termination.

D. In the event: (1) Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee (other than a suspension of five (5) working days or less or a temporary reduction in salary of thirty (30) days or less) in a greater percentage than an applicable across-the-board reduction for all employees of Employer; or (2) Employer refuses, following written notice, to comply with any other provisions benefiting Employee herein; or (3) Employee resigns following a formal suggestion by the City Council that he/she resign, then Employee may, at his/her option, be deemed to be "terminated" as of that time, and shall be entitled to the severance provisions of Section 4.A above.

E. In the event Employee voluntarily resigns his/her position with Employer before expiration of the above-referenced term of his/her employment, then Employee shall give Employer sixty (60) days' notice in advance, unless the parties otherwise agree, and Employee shall not be entitled to any severance pay.

Section 5. Disability.

If Employee is permanently disabled or is otherwise unable to perform his/her duties because of sickness, accident, injury, mental incapacity or health for a period of six (6) successive weeks beyond any accrued sick leave to which Employee is entitled, or for the legal duration of the Family & Medical Leave Act (whichever is greater), Employer shall have the option to terminate this Agreement. Termination pursuant to this Section would not subject the City to payment of severance benefits as specified under Section 4.A above. However, Employee shall be compensated for any accrued, vacation, holidays, administrative leave and other accrued benefits on the same basis as any other employee of the City pursuant to the Personnel Rules.

Section 6. Salary.

A. Employer agrees to pay Employee for his services rendered pursuant hereto an annual base salary of \$200,000, effective June 4, 2015, payable in equal installments at the same time as other employees of the Employer are paid. Employer agrees to review said base salary and/or other benefits of Employee at the time of an annual evaluation which shall be initiated in May for each year of the Term. Employer

may recommend adjustments to salary and/or other benefits during the time period that the annual review is performed.

B. In addition to the annual base salary, Employee may be eligible for annual performance-based compensation in the amount of up to 5% of Employee's annual base salary, not to exceed \$10,000, for any year in which performance-based compensation may be paid. Performance-based compensation shall be paid in a lump-sum for any given year, and, for purposes of such compensation, a year shall correspond to the City's fiscal year. Any payment of performance-based compensation shall be at the discretion of the City Council, and may only be paid if, in the City Council's discretion, Employee successfully meets performance goals and objectives as more particularly described in Exhibit "A" attached hereto and incorporated by reference (the "Performance-Based Compensation Metrics"). The City Council may meet, in accordance with applicable law, at least one time every fiscal quarter to evaluate the performance of Employee with respect to the progress on the Performance-Based Compensation Metrics. Any performance-based compensation authorized by the City Council pursuant to this paragraph shall be paid directly to a supplemental retirement plan for Employee pursuant to United States Internal Revenue Code section 457(b) or other lawful supplemental retirement plan authorized pursuant to applicable federal or state law (commonly referred to as a deferred compensation plan and referred to herein as the "Supplemental Plan"). Prior to any payment of performance-based compensation to Employee pursuant to this paragraph, the City Council shall establish and authorize, if not previously established and authorized, the maintaining of a Supplemental Plan in accordance with applicable law. Any performance-based compensation to Employee shall not be a payroll deduction and shall not be deemed or reported to the California Public Employees' Retirement System ("CalPERS") as "compensation earnable" as long as such performance-based compensation is paid directly to the Supplemental Plan. Any payment of performance-based compensation pursuant to this paragraph shall be paid to the Supplemental Plan no later than December 31 after the immediately completed prior fiscal year. In explanation of the previous sentence, any performance-based compensation for fiscal year 2014-15 shall be paid to the Supplemental Plan no later than December 31, 2015; for fiscal year 2015-16, paid no later than December 31, 2016; for fiscal year 2016-17, paid no later than December 31, 2017; and for fiscal year 2017-18, paid no later than December 31, 2018. After the City Council duly establishes and authorizes the maintaining of the Supplemental Plan, the City Council authorizes Employee or his designee(s) to execute any documents necessary or proper to maintain the Supplemental Plan prior to any payment of performance-based compensation to Employee, but the City Council retains any and all discretion to award or not award any and all performance-based compensation to Employee.

Section 7. Hours of Work.

In addition to working normal business hours, it is recognized that Employee must devote time outside the normal office hours to business of the Employer. Employee shall have 120 hours of Administrative Leave, consistent with Section 14.30.1 of the City's Personnel Rules. For partial calendar years, the 120 hours shall be prorated. Employee may not be employed by, or provide services to, any other entity while employed by the City.

Section 8. No Transportation Allowance.

City shall not provide a transportation allowance. Employee shall not be provided a City vehicle. Employee shall be entitled to reimbursement for mileage for the use of Employee's automobile for City business at then-applicable IRS rate.

Section 9. Vacation, Bereavement, and Sick Leave.

Employee shall accrue, and have credited to his/her personal account, vacation, bereavement and sick leave as provided for pursuant to the Personnel Rules.

Section 10. Other Benefits.

Employee shall be provided with the same health, dental, vision, life insurance, and retirement benefits and any future cost of living increases that occur after June 4, 2015, as other general full time employees of the City. Employee may receive an annual physical examination at City expense.

Section 11. Other Terms and Conditions of Employment.

A. The City Council, in consultation with the City Manager, 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 this Agreement, the Municipal Code or any applicable state or federal law.

B. All regulations and rules of the Employer relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, shall also apply to Employee as they would to other full-time employees of Employer, in addition to the benefits specifically set forth herein for the benefit of Employee.

Section 12. Notices.

Notices pursuant to this Agreement shall be given by: (1) email with verification of delivery; (2) facsimile transmission with confirmation; (3) personal delivery; (4) overnight delivery service with confirmation; or (5) deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

EMPLOYER: CITY OF LA QUINTA
78-495 Calle Tampico
La Quinta, CA 92253

EMPLOYEE: Frank J. Spevacek
53065 Avenida Navarro
La Quinta, CA 92253

Notice shall be deemed given as of the date of personal, overnight delivery, email, or facsimile service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 13. General Provisions.

A. This Agreement shall constitute the entire agreement between the parties. No prior oral or written communications are incorporated herein.

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

C. This Agreement may be signed in counterparts with signature pages transmitted by email, facsimile, personal delivery or overnight delivery, all of which will be treated as originals.

D. 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.

[signatures on next page]

IN WITNESS WHEREOF, the City of La Quinta has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this Agreement, both in duplicate, to become effective as of the Effective Date.

EMPLOYER:

CITY OF LA QUINTA

By: _____
LINDA EVANS
Mayor of the City of La Quinta

ATTEST:

Susan Maysels, CITY CLERK
City of La Quinta, California
(City Seal)

APPROVED AS TO FORM:

William H. Ihrke, CITY ATTORNEY
City of La Quinta, California

EMPLOYEE:

By: _____
Frank J. Spevacek

Exhibit "A"
Performance-Based Compensation Metrics

Annually, the City Council assesses the City Manager's performance after reviewing the organization's and his accomplishments. If the City Manager achieves an overall performance rating of Exceeds Expectations, then the City Manager may receive Performance Based Compensation as outlined in Section 6B of the Agreement. For Fiscal Year 2015/16, the City Manager's performance measures shall be based upon the items outlined below. Performance measures for Fiscal Years 2016/17 and 2017/18 will be established by the City Council for those respective years as a result of the City Manager's annual performance review.

Fiscal Year 2015/16 Performance Measures

Fiscal Stability/Revenue Growth

- Develop and implement a community outreach program that engages the community and increases the community's understanding of how to sustain City service levels, facilities and infrastructure.
- Achieve additional service delivery efficiencies that result in delivering the same or increased services at decreased cost.
- Identify and implement strategic infrastructure and public facility investments that reduce operations' costs.
- Develop and advance an operating budget wherein revenues and expenditures are balanced, and reserves are not needed to fund operations.
- Complete a comprehensive water conservation strategy by the fourth quarter of 2015.

Economic Development

- Provided that national and state economic conditions do not negatively impact debt and equity financing, ensure that SilverRock development activities commence no later than the second quarter of 2016.
- Complete the Village environmental and entitlement process by June 2016.
- Initiate and substantially complete a comprehensive review to streamline/simplify the City's development codes and processes by June 2016.

Improve the Organization's Strength

- Complete a succession plan by January 2016.
- Further embed the performance pay system into the City's organizational culture.
- Develop and report service delivery metrics for all departments by June 2016.
- Streamline/simplify non-development Codes by June 2016 (purchasing, claims, surplus property, etc.).