

## CONTRACT EMPLOYMENT AGREEMENT

This Agreement is entered into this 3rd day of July, 2014, by and between the City of Key West, Florida, a local governmental agency operating under the laws of the State of Florida and the charter of the City of Key West, Florida, ("City"), whose mailing address is PO Box 1409, Key West, FL 33041 and E. DAVID FERNANDEZ ("Utilities Director") whose present residence address is 21 Bougainvillea Avenue, Key West, FL 33040.

**1. Recitals.** The following recitals are an integral part of this Agreement and have been accepted as true by the parties and are part of the inducement for each party to execute this Agreement.

A. City desires to employ a Utilities Director for the City of Key West, who shall administer the Sewer, Stormwater and Solid Waste Departments.

B. E. David Fernandez worked as Utilities Director from January 1995 through February 2008 and Assistant City Manager of Operations from February 2008 to present. There will be no probationary period for Mr. Fernandez.

**2. Employment.** City hereby employs E. David Fernandez as Utilities Director.

**3. Full Time Employment and Benefits.** City and Utilities Director agree that the position of Utilities Director will be a full-time position. The parties recognize the hours worked by Utilities Director will necessarily require time outside typical office hours. The Utilities Director will dedicate forty (40) hours per week plus such additional hours as are necessary to perform his duties as Utilities Director.

Utilities Director shall receive vacation leave at the continued annual leave accrual rate of 6.15 hours per pay period with 26 pay periods per year or (4) weeks per fiscal year. Annual Leave current balance and Sick Leave buy out of (720) hours at current salary rate shall be afforded the Utilities Director upon execution of this contract and upon his retirement from his existing salaried position. Any remaining sick leave shall remain with employee on a use it or lose it basis and sick leave accruals will continue at the current rate. The Utilities Director is entitled to the same paid holidays as the general City Staff.

The City will continue to provide standard Medical, Dental, Vision and Life insurance and pay all associated premiums, maintaining "grandfathered" status.

**4. Term of Agreement; Termination; Resignation.**

**A. Normal Term.** The normal term of this Agreement will be for a period of sixty (60) calendar months, commencing at 8:00AM on the 3rd day of July, 2014 and ending at 5:00PM on the 2nd day of July 2019. While Utilities Director shall commence employment on July 3, 2014, he will continue all Assistant City Manager/Operations duties for a transition period as deemed necessary by the City Manager and will receive "out-of-class" pay at the current ACM/O rate.

**B. Extension of Term.** This Agreement will automatically renew annually after the initial 60 month term unless either the City Manager or Utilities Director gives the other written notice of its or his intent to modify or terminate the Agreement. Such written notice will be given not less than one hundred eighty (180) days prior to the expiration of any then existing term of this Agreement. For a renewal term year, the base salary will be increased in the same manner as the yearly increases specified in paragraph 6 of this agreement.

**C. Termination of Agreement.**

**1. By City for Cause.** The City Manager shall terminate the Utilities Director upon a finding of cause. "Cause" shall mean a substantial violation of the City's policies and procedures or a violation of ordinance or law, including a finding of "misconduct" as defined by Florida Statute section 443.036(30). Should City terminate this agreement for cause, Utilities Director will not be entitled to any further compensation beyond the effective date of such termination.

**2. By City Without Cause.** City may cancel this Agreement without cause only after initial term of (60) calendar months. Should City elect to cancel this agreement without cause, Utilities Director will be entitled to receive from City, and within fifteen (15) days will be paid by City, a sum equal to the total of the perspective benefits including medical, dental, vision and life insurances and salary that would be been earned by Utilities Director as if still employed under this Agreement for the twenty (20) calendar weeks following the effective date of cancellation in accordance with Florida Statute section 215.425. However, in no event will City be required to compensate Utilities Director for more than the number of months and benefits remaining during any unexpired term under this Agreement.

**3. By Utilities Director for Breach.** This Agreement may be terminated by Utilities Director upon a breach of this Agreement by City, provided the City has not cured the breach within thirty (30) days following receipt of the notice of the breach. If the breach has not been cured, termination will be effective on the thirty-first (31<sup>st</sup>) day following receipt of written notice from Utilities Director by the City.

**D. Resignation by Utilities Director.** In the event that Utilities Director resigns from the position of Utilities Director prior to the normal expiration date of this Agreement, he will not be entitled to any payment of any sums provided for in paragraph 4(C)(2) above. To effect such resignation, Utilities Director shall deliver written Notice of Resignation to the City through the City Manager. Unless otherwise agreed or waived by the City, Utilities Director shall provide notice at least ninety (90) days prior to the effective date of such resignation. Such resignation shall be accepted by the City Manager without prejudice and without recourse to any administrative or civil proceedings and the resignation shall be effective as of the date given in the written notice.

**5. Conflict of Interest Prohibition.** The Utilities Director shall not without the express prior approval of the City Manager, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City except for the purchase of real property and stock ownership in any company whose capital stock is publicly held and regularly traded. The Utilities Director shall abide by the provisions of Chapter 112, Florida Statutes and the Code of Ethics pertaining to public employees.

**6. Base Salary.** The City will pay to Utilities Director, as and for a base salary, the sum of One Hundred Thirteen Thousand Eight Hundred Thirty Five Dollars (\$113,835.00) per annum for the first year of employment; the base salary shall increase each year of this Agreement at the same percentage rate as afforded to City department heads in each particular fiscal year. For purposes of this Agreement, "per annum" will be defined for the first year as the twelve month period commencing on October 1<sup>st</sup> and each successive twelve month period thereafter. Payments shall be made in accordance with the City's standard payroll procedure.

**7. Travel Reimbursement.** City agrees to pay to or reimburse Utilities Director for the costs of meals, other expenses and lodging incurred by Utilities Director that may be necessary, required, or appropriate in fulfilling Utilities Director's duties and responsibilities under this Agreement. Meals, other expenses and lodging will be paid for or reimbursed at the rates specified in Section 112.061, Florida Statutes, or as permitted under City Ordinance, whichever is greater, as with any other City employee.

**8. City Retirement System.** City agrees that Utilities Director will not be a member active in the General Employees Retirement Plan of the City.

**9. Duties and Responsibilities.**

**A. General.** Utilities Director will have those responsibilities and perform those duties which are listed in the attached job description dated May 2014.

**B. Availability and Residence.** Utilities Director will be reasonably available to City Manager and key City staff twenty-four (24) hours per day. Such availability will be by telephone or electronic messaging, or in person.

**C. Performance Review.** Per current City policy.

**D. Outside Activities.** Utilities Director shall be allowed to teach, train and/or consult with other municipalities or private and public sector entities so long as it does not interfere or conflict with City business. The

Utilities Director is encouraged to engage in community activities if such activities are not in conflict with the interests of the City. The City Manager shall be the sole judge of any interference or conflict.

**10. Professional Development and Memberships.** The City agrees to annually budget and to pay the reasonable membership dues for professional trade associations or organizations at the national and state level. Travel and subsistence expenses of the Utilities Director for professional and official travel, conferences, meetings, seminars and other occasions, adequate to continue his professional development and to pursue official and other functions of the City. The feasibility and costs of such professional development and memberships will be discussed each year between the Utilities Director and City Manager in formulating the budget and funding of such expenses is subject to the discretion of the City Manager.

**11. Personal Leave.** The Utilities Director and City agree that, due to the variety of hours worked and requirements of the position of Utilities Director, interference with Utilities Director's family life is to be expected and it is recognized that Utilities Director may from time to time absent himself during normal business hours for personal or family time; provided, however, that Utilities Director remains reasonably available to City Manager and City staff by telephone or other electronic means. Such personal time or family time will not be considered or debited against vacation time.

**12. Indemnification.** The City will defend, hold harmless and indemnify Utilities Director against any tort, professional liability, or other legal demand, claim, or action which is related directly or indirectly to Utilities Director's lawful actions in his capacity as Utilities Director.

**13. Bonding.** The City agrees to bear the full cost of any fidelity or other bonds required of the Utilities Director under any policy, regulation, ordinance or law.

**14. Miscellaneous Provisions.** This agreement is made in the State of Florida and is governed by Florida law. This is the entire agreement between the parties and may not be modified or amended except by a written document signed by the party against whom enforcement is sought. This agreement may be signed in more than one counterpart, in which case each counterpart will constitute an original of this agreement. Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this agreement. Wherever used herein, the singular will include the plural, the plural will include the singular, and pronouns will be read as masculine, feminine or neuter as the context requires. If any provision of this agreement is held invalid or unenforceable, the remainder of the agreement shall remain in full force and effect, and the offending provision shall be amended to the nearest legally permissible term as permitted by law so as to effectuate the intent of the parties. This Agreement is a joint result of the parties' negotiations and shall not to be construed against any party on the basis of authorship. The prevailing party in any litigation, arbitration or mediation relating to this agreement will be entitled to recover its reasonable attorneys' fees from the other party for all matters, including, but not limited to, appeals. Venue for any litigation involving this agreement shall be Monroe County, Florida.

IN WITNESS WHEREOF the parties have executed this Agreement on this 11th day of June, 2014.

  
Bogdan Vitas/ City Manager

  
E. David Fernandez/Utilities Director

Attest:  
