

RESOLUTION NO. 07-199

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A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED EMPLOYMENT AGREEMENT BETWEEN THE CITY OF KEY WEST AND JAMES K. SCHOLL FOR THE POSITION OF CITY MANAGER; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, at its meeting of May 21, 2007, the City Commission selected James K. Scholl as City Manager and authorized the negotiation of an employment agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Employment Agreement between the City of Key West and James K. Scholl is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 5 day of June, 2007.

Authenticated by the presiding officer and Clerk of the Commission on June 6, 2007.

Filed with the Clerk June 6, 2007.

  
MORGAN MCPHERSON, MAYOR

ATTEST:

  
CHERYL SMITH CITY CLERK

## CITY MANAGER EMPLOYMENT AGREEMENT

**THIS AGREEMENT** is entered into on this 6th day of June, 2007 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 main business address is 525 Angela Street, Key West, Florida 33040, and JAMES K. SCHOLL ("Manager"), whose present residence address is 21384 Conch Drive, Cudjoe Key, Florida 33042; and City and Manager hereby agree as follows:

**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 City Manager for the City of Key West, who shall be the chief executive and the administrative officer of the City in accordance with the City Charter.

**B.** After an extensive selection process, the City voted to hire James K. Scholl as City Manager at a duly noticed public meeting on May 21, 2007.

**2. Employment.** City hereby employs Manager as City Manager.

**3. Full Time Employment and Benefits.** City and Manager agree that the position of City Manager will be a full-time position. The parties recognize the hours worked by Manager will necessarily require time outside typical office hours. Manager will dedicate an average of at least forty (40) hours per week to the duties specified herein. Manager shall receive vacation leave at the rate of 20 days per year. Sick leave shall accrue in the same manner as for other City department heads. Manager specifically agrees to forego any dental, vision, prescription drug and similar health benefits typically provided to City employees. However, City shall pay up to seven hundred and fifty dollars (\$750.00) annually for a medical physical examination, if required. Additionally, City agrees to pay all required recurring investigation costs to maintain Manager's U.S. Government security clearance at the Secret level in an amount not to exceed five thousand dollars (\$5,000.00).

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

**A. Normal Term.** The normal term of this Agreement will be for a period of thirty-six (36) calendar months. Regardless of such normal term, Manager shall become the City Manager pursuant to the City Charter, Code of Ordinances and applicable law upon execution of this agreement. However, it is recognized that Manager's first full day of service and effective pay period shall commence at 8:00 A.M. on the 2<sup>nd</sup> day of July

2007 and the term shall expire at 5:00 P.M. on the 1<sup>st</sup> day of July 2010, unless extended as provided herein.

**B. Extension of Term.** This Agreement will automatically renew for a two-year period unless either the City or the Manager 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 shall be a minimum of one hundred eighty thousand dollars (\$180,000.00), plus such other amounts as the City Commission may approve based upon the Manager's Performance Review Evaluations.

### **C. Termination of Agreement**

**1. By City for Cause.** The City Commission shall terminate the City Manager only 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. Should City terminate this agreement for cause, Manager 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. Should City elect to cancel this agreement without cause, Manager 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 prospective benefits and salary that would have been earned by Manager as if still employed under this Agreement for the six (6) calendar months following the effective date of cancellation. However, in no event will City be required to compensate Manager for more than the number of months and benefits remaining during any unexpired term under this Agreement.

**3. By Manager for Breach.** This Agreement may be terminated by Manager 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 Manager by the City.

**4. By Normal Expiration.** This Agreement is terminated upon its normal expiration date as stated in Section 4.A.

**D. Resignation by Manager.** In the event that Manager resigns from the position of City Manager prior to the normal expiration date of this Agreement, he will not be entitled to any payment for any sums provided for in paragraph 4(C)(2) above. To effect such resignation, Manager shall deliver written Notice of Resignation to the City through the City Clerk. Unless otherwise agreed or waived by the City, Manager shall provide Notice at least sixty (60) days prior to the effective date of such resignation. Such resignation shall be accepted by the City 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 City Manager shall not without the express prior approval of the City Commission, individually, as a partner, joint venturer, 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 City Manager 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 Manager, as and for a base salary, the sum of one hundred eighty thousand dollars (\$180,000.00) per year for the first three years of employment. Payments shall be made in accordance with the City's standard payroll procedure.

**7. Transportation.** City agrees to provide City Manager with a full size automobile for exclusive use while conducting official city business. The City will pay all operations and maintenance costs.

**8. Travel Reimbursement.** City agrees to pay to or reimburse Manager for the costs of meals, other expenses and lodging incurred by Manager that may be necessary, required, or appropriate in fulfilling Managers 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.

**9. City Retirement System.** City agrees that Manager will be a member of the General Employees Retirement Plan of the City. City and Manager will contribute such amounts at such times in accordance with standard City policy and procedure.

**10. Duties and Responsibilities.**

**A. General.** Manager will have those responsibilities and perform those duties which are listed in the City Charter, the City Code of Ordinances, state and federal law. The City Manager shall also perform such other legally permissible and proper duties and functions as the City Commission shall from time to time assign.

**B. Availability.** City Manager will be reasonably available to City Commissioners 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.** After City Manager's first six months of performance, and continuing annually thereafter, the City Commission and City Manager shall define such goals and performance objectives that they determine necessary for the proper

operation of the City Manager's office and in the attainment of the City Commission's policy objectives, and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and within the annual operating and capital budgets and appropriations provided.

In effecting the provisions of this Section, the City Commission and City Manager mutually agree to abide by applicable law. The City Manager, City Commission and Mayor will bring any perceived problems or inadequacies to the attention of the other, in private, and will exercise a good faith effort to mutually resolve such perceived problems or inadequacies.

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

**11. Professional Development and Memberships.** The City agrees to annually budget and to pay the travel and subsistence expenses of the City Manager for professional and official travel, meetings, seminars and other occasions, adequate to continue his professional development and to pursue official and other functions of the City.


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


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


**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 6 day of June 2007.

  
MORGAN MCPHERSON,  
MAYOR CITY OF KEY WEST

  
JAMES K. SCHOLL  
CITY MANAGER

Attest  
  
CHERYL SMITH, CITY CLERK