

**RESOLUTION No. 2016-163
CITY OF SHOREACRES**

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED PROFESSIONAL EMPLOYMENT AGREEMENT WITH THE CITY ADMINISTRATOR; MAKING VARIOUS FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.

* * * *

WHEREAS, the City Council desires to remove the "evergreen" provision from the city administrator's professional employment agreement ("Agreement") and establish an ending date to such agreement; and,

WHEREAS, the City Council desires to freeze the salary of the city administrator by removing the cost of living and annual salary review provisions from the city administrator's Agreement; and,

WHEREAS, the City Council desires to reduce the amount of vacation leave available to the city administrator during the remaining term of the city administrator's Agreement; and,

WHEREAS, the City Council desires to remove the restriction on reducing the city administrator's authority during the remaining term of the city administrator's Agreement; and,

WHEREAS, the city administrator agrees to the limited modification of the existing Agreement as attached hereto, including compensation for accrued vacation leave in excess of that allowed as set out in the modified agreement, and clarification of the work week.

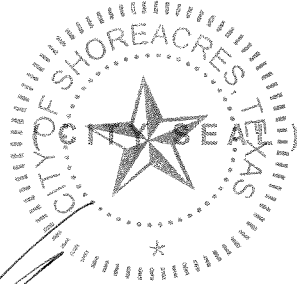
NOW, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SHOREACRES:

THAT the City Council hereby approves and authorizes the Mayor to execute the amended professional employment agreement with the city administrator as attached hereto (EXHIBIT A).

The City Council officially finds, determines, recites, and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this resolution and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

This Resolution shall take effect immediately upon passage.

PASSED AND APPROVED, this 28th day of March, 2016.

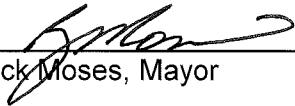


ATTEST:

David K. Stall, CFM, TEM
City Secretary

CITY OF SHOREACRES

By:



Rick Moses, Mayor

EXHIBIT A

AGREEMENT FOR PROFESSIONAL SERVICES
AND EMPLOYMENT AS CITY ADMINISTRATOR

This Agreement for Professional Services and Employment as City Administrator (this "Agreement"), is made and entered into effective as of April 1, 2016, by and between the City of Shoreacres, Texas, a municipal corporation (the "City"), and David K. Stall, (the "Administrator"), to establish and set forth the terms and conditions of the employment of the Administrator as the City Administrator of the City.

WITNESSETH:

WHEREAS, the City Council of the City (the "Council") and City Administrator believe that employment agreements negotiated between City Councils and City Administrators can be mutually beneficial to the city organization, the City Administrator, and the community they serve; and,

WHEREAS, when appropriately structured, the City Council and City Administrator believe employment agreements can strengthen the Council-Administrator relationship by enhancing the excellence and continuity of the management of the city for the benefit of its citizens; and,

WHEREAS, the City Council and City Administrator believe it is important to thoughtfully consider guidelines that will be consistent with both the letter and the spirit of State law, and to the extent applicable, the city's code and personnel policies, that will uphold the principle of "serving at the pleasure of the Council," that will clearly define and incorporate the benefits to the community and organization, and that will address the protection of the Administrator through provisions that are reasonable in nature and scope when compared to professional practices and local/regional market conditions and appropriately funded within the city's budget; and,

WHEREAS, the City desires to employ the services of a City Administrator, pursuant to the terms, conditions and provisions of this Agreement; and,

WHEREAS, it is the desire of the Council, to provide compensation and benefits, establish conditions of employment for, and to set the working conditions of, the Administrator as provided in this Agreement; and,

WHEREAS, the Council desires to secure and retain the services of the Administrator, and to provide a proper means for termination, resignation, or retirement of the Administrator; and,

WHEREAS, except as otherwise specifically provided herein, the Administrator shall have and be eligible for the same benefits as are provided to all other employees of the City; and,

WHEREAS, the Administrator has agreed to continue employment as the City Administrator of the City, subject to and on the terms, conditions, and provisions agreed to and set forth in this Agreement;

NOW, THEREFORE, in consideration of Administrator continuing employment with the City, and other good and valuable consideration, including the mutual covenants herein contained, the City and the Administrator hereby contract, covenant, and agree as follows:

Section 1. Duties. The Council hereby employs the Administrator as the chief administrative officer of the City to perform the duties and functions specified in the Shoreacres City Code and

Attachment A of this Agreement, and as the Council shall, from time to time, assign to the Administrator consistent with the intent of this Agreement.

The Administrator shall report for work, and the duties and employment of the Administrator shall commence under this agreement on the 1st day of April, 2016 (the "Agreement Date").

Section 2. Term. The term of this Agreement shall be from the Agreement Date to March 31, 2017; and, shall automatically renew for one additional eleven month term commencing on March 31 ("Commencement Date") and ending on February 28, 2018 ("End Date"); and, shall be and remain in full force and effect until the End Date or terminated by the Administrator or the Council as herein provided (the "Term").

The Administrator shall serve at the pleasure of the Council and nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council, or the Administrator, to terminate the services of the Administrator at any time, subject only to applicable provisions of the city code, city personnel policies, and the provisions set forth hereinafter in the section titled "Termination."

Section 3. Salary. City agrees to pay the Administrator an annual base salary, which salary as agreed upon by City Council and included in the annual budget payable in installments at the same time as other employees of the City are paid.

Section 4. Disability and Retirement Benefits. The Administrator shall be covered and governed by the same retirement system as are all other employees. Retirement contributions shall be paid as required by the retirement system's plan documents.

If the Administrator retires pursuant to a qualified retirement plan or is permanently disabled during the Term, the Administrator shall be compensated for all sick leave, vacation leave, holidays, and other benefits then accrued or credited to the Administrator, and, at the Administrator's option, shall be permitted to continue to participate in the City's health insurance plan on the same basis as other retirees from the City are permitted to do so, or, if such other retirees are not permitted to do so, at the cost of the Administrator.

Section 5. Insurance and Annual Physical.

A. Health Insurance. The Administrator shall be covered by the same health, dental, and vision plans as all other employees, or such plans that are available through the City and selected by the Administrator, The City shall pay the same portion of the employee share of premiums for the Administrator as it pays for other employees.

B. Life Insurance. The Administrator shall be covered by the same life insurance policy as all other employees, or such plans that are available through the City and selected by the Administrator. The City shall pay the same portion of the employee share of premiums for the Administrator as it pays for other employees. The Administrator shall designate the beneficiary of such policy.

C. Disability Insurance. The Administrator shall be covered by the same disability insurance plan as all other employees, or such plans that are available through the City and selected by the Administrator. The City shall pay the same portion of the employee share of premiums for the Administrator as it pays for other employees.

Section 6. Monthly Vehicle Allowance. The Administrator's duties require exclusive and unrestricted use of a vehicle. The City agrees to pay to the Administrator, during the term of this

Agreement and in addition to other salary and benefits herein provided, the sum of \$600.00 per year, payable monthly, as a vehicle allowance. The Administrator shall acquire and maintain a vehicle during the term of this Agreement, which shall be available for the Administrator's exclusive and unrestricted use in the performance of his duties hereunder. The Administrator shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle.

Section 7. Leave Benefits. All provisions of the rules and regulations of the City applicable to fringe benefits, leave and working conditions as they now exist or hereafter may be amended, shall also apply to the Administrator as they apply to all other employees of the City. Vacation, sick leave, and all other benefits which vary according to tenure shall be calculated and granted to the Administrator in accordance with the City's regulations using the original employment date of the Administrator with the City as February 16, 2005.

On the Agreement Date the vacation leave available to the Administrator shall be reduced to eighty (80) hours. If the vacation leave available to the Administrator on the Agreement Date is less than eighty (80) hours, the amount of available leave shall remain the same with no reduction or increase. The City shall pay the Administrator for vacation leave accrued as of that date in excess of eighty (80) hours, if any, at the same rate as would be paid at separation.

Section 8. Professional and Civic Development. The City agrees to budget and pay for the civic and professional membership dues and subscriptions of Administrator necessary for the Administrator's continuation and participation in national, regional, state, and local associations necessary and desirable for the Administrator's continued professional participation, growth and advancement, and for the good of the City. Developing and maintaining professional association contacts and standing provide the City access to valuable resources, and the reasonable participation and related travel by Administrator as provided for in the annual budget will be a part of the Administrator's duties.

Section 9. Business Expenses. Certain expenses of a non-personal and job-related nature will necessarily be incurred by the Administrator in the performance of the Administrator's duties. The City will pay or reimburse such business expenses, upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits. The City will also pay the full cost of any bond, if any is required by the City to be made by the Administrator.

Section 10. Indemnification. To the fullest extent permitted by law, City shall defend, save harmless and indemnify Administrator against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Administrator's duties, and shall obtain and keep in full force and effect liability insurance, or risk pool coverage, including errors and omissions coverage on a "per occurrence" basis, in sufficient amounts to assure accomplishment of such hold harmless and indemnification; provided that this section shall not be construed as creating any right, cause of action, or claim of waiver or estoppel for or on behalf of any third party, nor shall it be construed as a waiver or modification of the availability of the defense of governmental immunity or any other legal defense available to either City or the Administrator as to any third party; and provided further that City shall not indemnify and hold harmless the Administrator from and with respect to any claim or liability for which the conduct of the Administrator is found by the courts to have been grossly negligent or intentional wrongful conduct.

City will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. This indemnification shall extend beyond and survive the termination of employment and the expiration of this Agreement.

Section 11. Hours of Work. It is recognized that the Administrator is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at all times, and must devote a great deal of time outside the normal office hours to the business of the City.

The Administrator acknowledges the proper performance of the duties of the City Administrator of the City will require the Administrator to generally work a minimum of forty (40) hours per week Monday through Thursday and will also often require the performance of necessary services outside of normal business hours.

The Administrator agrees to devote such additional time as is necessary for the full and proper performance of the Administrator's duties and that the compensation herein provided includes compensation for the performance of all such services.

However, the City intends that reasonable time off be permitted the Administrator, such as is customary for exempt employees so long as the time off does not interfere with the normal conduct of the office of the City Administrator.

The Administrator will devote full time and effort to the performance of the duties of the City Administrator of the City, and shall remain in the exclusive employ of the City during the Term of this Agreement; provided that, with the prior consent of the Council, the Administrator may accept temporary, outside professional employment which will not in any way limit the performance of, or the Administrator is availability for the performance of, the Administrator's duties hereunder. The term "outside professional employment" shall be construed to include occasional teaching, writing or consulting performed on the Administrator's time off.

Section 12. Termination and Severance Pay.

A. Termination. In the event Administrator is terminated by the Council during the Term of this Agreement and Administrator is then willing and able to perform all the duties of the City Administrator under this Agreement, then, in that event, the City agrees to pay the Administrator a lump sum cash payment equal to five months full salary and benefits, plus the value of all sick and vacation leave, holidays and other benefits accrued by, or credited to, the Administrator prior to the termination; provided that, if the Administrator is terminated because of a conviction for a misdemeanor involving moral turpitude or personal gain, or any felony, then, in that event, the City shall have no obligation to pay the severance payments designated in this Section.

B. Reductions. In the event the Council during the Term of this Agreement reduces the salary or other financial benefits of Administrator in a greater percentage than an applicable across-the-board reduction for all employees of the City, or in the event the City refuses, following written notice, to comply with any other provision benefiting the Administrator herein, or the Administrator resigns following a suggestion, whether formal or informal, by the Council that the Administrator resign, then in that event, the Administrator may, at the Administrator's option, be deemed to have been terminated as of the date of such reduction, or as of the date the Administrator resigns at the Council's suggestion; provided that, notice having first been given, the suspension of the Administrator with pay pending the resolution of any criminal charge filed against the Administrator shall not constitute a termination, or a reduction under this Section.

The Council shall be deemed to have suggested the resignation of the Administrator at any time when a majority of the members of the Council shall at a Council meeting, or in writing, suggest that the Administrator resign.

C. Resignation. If the Administrator terminates this Agreement by voluntary resignation of the position of City Administrator, the Administrator shall give 90 days notice in advance unless the Council agrees otherwise.

Section 13. Notices. All notices, demands, and other writings may be delivered by either party hereto to the other by United States Mail, or by a reliable commercial courier at the following address:

- (1) City: Mayor
City of Shoreacres
601 Shore Acres Blvd.
Shoreacres, TX 77571
- (2) Administrator: David K. Stall
1112 FM 955
Fayetteville, TX 78940

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service, or three (3) days after the date the notice is deposited in the United States Mail or with a commercial courier.

Section 14. Conflict of Interest Prohibition. The Administrator shall not, during the Term of this Agreement, 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 stock ownership in a company whose capital stock is publicly held and regularly traded on any stock exchange, without the prior written approval of the Council. For and during the Term of the Agreement, the Administrator shall, except for a personal residence or residential property acquired or held for future use as the Administrator's personal residence, not invest in any other real estate or property improvements within the City, without the prior written consent of the Council.

Section 15. Appropriations. The Council has appropriated, set aside and encumbered, and does hereby appropriate, set aside, and encumber, available and unappropriated funds of the City in an amount sufficient to fund and pay all financial obligations of the City pursuant to this Agreement, including, but not limited to, the severance pay, salary and benefits set forth and described herein.

Section 16. General Provisions.

A. Section headings. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

B. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Texas. Venue shall lie exclusively in Harris County, Texas.

C. Severability. In the event anyone or more of the sections, provisions or clauses contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement,

but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

D. Entire Agreement. This Agreement incorporates all the agreements, covenants and understandings between the City and the Administrator concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No other prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.


E. Amendment. This Agreement shall not be modified or amended except by a written instrument executed by the Administrator and the duly authorized representative of the Council.

F. Effective Date. This Agreement shall be and become in full force and effect as of the date above first written upon the adoption and approval of the Council, and the execution and delivery hereof by the authorized officer of the City and the Administrator.


G. Counterparts. This Agreement may be executed in duplicate original counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one in the same instrument.

IN WITNESS WHEREOF, the City and the Administrator have executed this Agreement effective as of the date first written above.


CITY OF SHOREACRES


Rick Moses, Mayor



ATTEST:

Richard Adams, Mayor pro tem

AGREED AND ACCEPTED this the 29th day of March, 2016.


David K. Stall, CFM, TEM, City Administrator