



To: MAYOR AND CITY COUNCIL

Agenda Item #: XI. A.

From: Scott H. Neal, City Manager

Action

Discussion

Date: February 3, 2015

Information

Subject: City Manager Employment Agreement

Action Requested:

Motion to approve the proposed employment agreement with City Manager Scott Neal and direct the Mayor and City Clerk to execute the agreement on behalf of the City.

Information / Background:

The employment agreement between the City and me expired on December 31, 2014. In anticipation of that expiration, the City Council directed me to engage Mr. Harry Brull to conduct a formal performance review to assist Council Members with the decision of my retention as your city manager.

The review was completed in December 2014. Council Members met with Mr. Brull in closed session on January 6 to discuss the review and to solicit his general insights on my work performance. Following the Council's meeting with Mr. Brull, the Council gave me the direction to draft a new employment agreement and appointed Mayor Hovland and Council Member Swenson to meet with me to discuss the terms of the proposed agreement.

I met with Mayor Hovland and Council Member Swenson on January 9. I presented them a proposed employment agreement. They subsequently reviewed that proposal, and then scheduled a closed session to review it with City Council Members on January 20. HR Director Lisa Schaefer also attended the closed session to assist the Council's discussion about the proposed agreement.

Following the January 20 closed session, Ms. Schaefer incorporated the Council's direction into the attached agreement, which is in the same format as the agreement that I originally proposed to Mayor Hovland and Council Member Swenson on January 9, with four exceptions that I will detail for you below:

- The attached agreement includes the Council's direction to increase my annual salary to the current salary cap and directs the City to prepare and submit a request for salary cap waiver to the State. The waiver request is being prepared. It will be presented to the City Council for approval before it is submitted to the State.
- I have added one sentence to the end of section 5.A. that will allow the City to provide me with a lump sum of 20 additional hours of paid vacation leave if the State does not grant the proposed salary cap waiver. The 20 hours of paid leave is the incremental difference between the 1.7% salary increase that is incorporated into the attached agreement and the 2.5% salary increase that was provided to other fulltime City employees for 2015.

- During the closed session, Ms. Schaefer advised the Council that the City's new employee fringe benefit package would require some language changes in the employment agreement to make the agreement conform to our new employee fringe benefit structure. Those changes have been made. The only material change is one that requires the City to provide me with long term disability insurance under the same terms as other City employees. That benefit was not provided in my previous agreement because it was not a City fringe benefit at the time my previous employment agreement was executed. This is a relatively low cost fringe benefit and does not impact my compliance with the State's salary cap.
- My previous employment agreement included a health and fitness benefit – an Employer paid membership at the Southdale YMCA. The cash value of that benefit is included in the computation of the City's salary cap compliance. Because the Council has proposed to increase my annual salary to the salary cap max, I must concede this benefit in order to stay in compliance with the salary cap. The benefit has been removed from the attached agreement.

With the exception of the aforementioned changes, the provisions of the attached employment agreement are the same as the previous employment agreement. The term of the attached agreement is three years, beginning January 1, 2015 and ending December 31, 2017.

Recommendation:

I have reviewed the terms of the agreement. If adopted by the Council, I would be pleased to continue in my position as Edina's city manager.

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into effective this 3rd day of February, 2015, by and between the **CITY OF EDINA**, a Minnesota municipal corporation ("Employer"), and **SCOTT H. NEAL** ("Employee").

The parties agree as follows:

1. POSITION. Employer agrees to employ Employee as its City Manager and as the Executive Director of its Housing and Redevelopment Authority. Employee agrees to serve in the positions in accordance with state statutes and City ordinances and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

2. TERM AND TERMINATION. The term of this Agreement shall be three (3) years commencing on the effective date of this Agreement, which shall be January 1, 2015. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time during the term of this Agreement by giving notice and otherwise complying with the conditions set forth in this Agreement. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of the Employee at any time, at the sole discretion of the Employer, in accordance with the terms of this Agreement.

3. PENSION PLAN. Employer shall contribute to PERA as required by State law for Employee or an alternate pension plan, if selected by Employee, as authorized by State law.

4. PERFORMANCE EVALUATION. Employer agrees to conduct an annual performance review of the Employee during January of each year. The review shall be in accordance with specific criteria developed jointly by the Employer and the Employee. Such criteria may be added to or deleted as the Employer may from time to time determine in consultation with the Employee. The Employer shall provide the Employee with a written performance review and provide adequate opportunity for the Employee to discuss the review with the Employer in closed session, as allowed by Minnesota State Statutes. The failure of the Employer to conduct the annual review shall not affect the parties' respective rights to terminate this Agreement or any other rights in the Agreement.

5. SALARY. The annual salary of the Employee shall be determined by mutual agreement of the Employer and the Employee, and subject only to the terms of this Agreement, and the Minnesota local government employee salary cap (Minn. Stat. 43A.17). Subject to receiving satisfactory performance reviews by the Employer, the Employer and Employee mutually agree to following:

- A. Effective January 1, 2015 the council approves an increase in annual salary of 2.5% for a total of \$166,630 annually. Recognizing that Minn. Stat. 43A.17 currently limits compensation to \$165,003, Employee's actual salary effective January 1, 2015 will be \$165,003. The City Council intends to apply for a waiver with the state to increase the salary limit. If that waiver is granted, employee's salary will be increased to the waiver amount or to \$166,630, whichever is less. If the waiver is not

granted, Employer agrees to grant Employee a lump sum of 20 hours of additional paid vacation leave.

- B. Effective January 1, 2015, and on each subsequent January 1st of this agreement, Employee's annual salary shall be adjusted to the Minnesota local government employee salary cap in effect on that date.;

6. PAID LEAVE. Employee shall earn paid sick leave at the rate of 3.69 hours per payroll period and paid vacation leave at the rate of 6.15 hours per payroll period. The Employee shall accrue no more than 600 hours of paid sick leave and no more than 400 hours of paid vacation leave during the term of employment. 100% of Employee's accrued paid vacation time and 50% of Employee's accrued paid sick leaves are compensable at severance, subject to the terms of section 15 of this agreement. Employee shall have the option to reduce hours of paid leave by converting it to cash compensation no more than twice each year at the Employee's then hourly rate of pay in increments of no less than hour 40 hours and no more than 120 hours.

Employee shall be entitled to paid holiday leave, bereavement leave, leave without pay on the same basis as the City's Department Director employees are receiving on January 1, 2015. Any future changes to the City's paid leave policies shall not change the level of benefit for the Employee, unless the parties so agree.

Employee shall be credited with having completed sixteen (16) years of employment with the City upon his first day of employment, November 8, 2010.

7. BENEFITS. In lieu of the City contribution to the employee cafeteria plan, Employer shall pay 100% of the cost to provide hospital, medical and dental insurance to Employee and his dependents under a plan offered to other employees. Employee will receive employer-paid life insurance and long-term disability as is provided to all other full-time employees. If Employee wishes to receive other benefits Employee must pay 100% of the cost

In the event the Federal 2012 Patient Protection and Affordable Care Act (PPACA) requires the Employer to change, modify or amend its current employee hospital, medical and dental insurance program, Employer shall not to reduce the cash value of this benefit to the Employee.

8. DUES AND SUBSCRIPTIONS. Employer shall budget and pay the professional dues, subscriptions, and travel and subsistence expenses for Employee which are deemed reasonable and necessary for Employee's continued participation in national, regional, state and local associations necessary and desirable including: International City/County Management Association, Minnesota City/County Management Association, National League of Cities and the League of Minnesota Cities. Employee shall use good judgment in his outside activities so he will not neglect his primary duties to the Employer.

9. PROFESSIONAL DEVELOPMENT. After the completion of three years of employment, Employer agrees to provide the Employee the opportunity, at Employee's discretion, to attend the International City/County Management Association's Senior Executive Leadership Institute (ICMA-SEI) at the University of Virginia's Darden School of Business in

Charlottesville, Virginia. Employer agrees to budget and pay for all expenses related to Employee's attendance at the ICMA-SEI, including tuition, books, materials, travel and lodging.

10. CIVIC CLUB MEMBERSHIP. Employer recognizes the desirability of representation in and before local civic and other organizations. Employee is authorized, at the Employer's expense, to become a member of such civic clubs or organizations as deemed appropriate by Employee and Employer, including, but not limited to, the Edina Chamber of Commerce and the Edina Noon Rotary Club.

11. AUTOMOBILE. Employee shall be reimbursed for the personal use of his automobile on City business on a per mile basis in accordance with IRS regulations.

12. WORK TOOLS. Employer agrees to provide Employee with contemporary technology devices such as a mobile telephone, computer and other devices which are, in the judgment of the parties, necessary to accomplish the work of the Employee. Employer acknowledges the Employee may make regular personal use of the devices. Employee recognizes that devices and tools provided to the Employee by the Employer under this section of the agreement are and remain property of the Employer. Employee agrees to return said property to the Employer no later than the Employee's final date of employment.

13. GENERAL EXPENSES. Employer shall reimburse Employee reasonable miscellaneous job related expenses which it is anticipated Employee will incur from time to time when provided appropriate documentation.

14. HOURS OF WORK. It is mutually understood the Employee is a FLSA-exempt employee without set hours of work, but is expected to be available at all times and to engage in those hours of work, subject only to illness, injury and scheduled annual vacations, that are necessary to fulfill the obligations of the City Manager's position. It is understood that the position of City Manager requires attendance at evening meetings and occasionally at weekend meetings. It is understood by Employee that additional compensation and compensatory time shall not be allowed for such additional expenditures of time. It is further understood that Employee may absent himself from the office to a reasonable extent in consideration of extraordinary time expenditures for evening and weekend meetings at other than normal working hours.

Employee may engage in teaching, consulting, speaking or perform other non-City connected activities for which he is compensated without consent of the Employer provided the activities do not diminish the Employee's ability to perform the essential duties of the City Manager position, as described in sections 1 and 14 herein, and provided the activities do not conflict with the interests of the Employer. Employee agrees to provide written notice to Employer of activities conducted under this paragraph.

15. TERMINATION BENEFITS. In the event that Employee is terminated by the Employer during such time that Employee is willing and able to perform the duties of City Manager, then in that event, Employer agrees to pay Employee at the time of receipt of his last pay check a lump sum cash payment equal to six (6) months aggregate salary and to continue to provide and pay for the benefits set forth in paragraph 9 for a period of six (6) months following

termination. However, in the event Employee is terminated because of his malfeasance in office, gross misconduct, conviction for a felony, or conviction for an illegal act involving personal gain to Employee, then Employer shall have no obligation to pay the termination benefits.

If Employer at any time during the employment term reduces the salary or other financial benefits of Employee in a greater percentage than across-the-board reduction for all non-union employees, or if Employer refuses, following written notice, to comply with any other provisions of this Agreement benefiting Employee or Employee resigns following a formal suggestion by Employer that he resign, then Employee may, at his option, be deemed to be "terminated" on the effective date of Employee's resignation and the Employee shall also be entitled to receive the termination benefits set forth above.

If Employee voluntarily resigns his position with Employer, Employee agrees to give the Employer thirty (30) days advance notice. If Employee voluntarily resigns his position with Employer, there shall be no termination benefits, as provided in this paragraph, due to Employee.

16. INDEMNIFICATION. The Employer shall defend and indemnify the Employee against and for all losses sustained by the Employee in direct consequences of the discharge of the Employee's duties on the behalf of the Employer. In the event the Employee serves on boards of directors of City-related legal entities, the Employer shall extend the same indemnification benefits and protections to Employee for the City-related entity as is provided for the Employee for actions taken on behalf of the Employer. Employer may compromise and settle, without the consent of Employee, any such claim or suit and pay the amount of the settlement or judgment rendered thereon. This covenant shall survive the termination of this agreement, but shall not obligate the Employer to pay punitive or exemplary damages which may

be awarded but Employer may, in its sole discretion, elect to do so to the extent authorized by law.

17. OTHER CONDITIONS OF EMPLOYMENT. Subject to any amendments, the City's ordinances, City Employee policies, and State Statutes, are all incorporated herein except to the extent that they conflict with this Employment Agreement, wherein this Employment Agreement shall be controlling.

IN WITNESS WHEREOF, Employer has caused this Agreement to be signed and executed on its behalf by its Mayor and City Clerk, and Employee has signed this Agreement, in duplicate, the day and year first written above.

EMPLOYER:
CITY OF EDINA

EMPLOYEE:
SCOTT H. NEAL

BY: _____
Mayor

City Manager

AND

City Clerk