



CITY COUNCIL Agenda Item #19-063(e)

Date: February 27, 2019

Consent X Discussion

SUBJECT: City Manager's Contract

SUBMITTING DEPARTMENT: City Manager

RECOMMENDED ACTION: Approve the City Manager's employment agreement effective March 1, 2019 to March 1, 2022. Authorize the Mayor to sign the contract.

RELATED COUNCIL GOAL/PRIOR ACTION: Responsive & Responsible Government

EXPENDITURE REQUIRED: None

SOURCE OF FUNDS: N/A

LEGAL REQUIREMENTS: Chapter 1002 of the City Charter requires that the City Council shall enter into a written agreement with the City Manager/

City Manager's Employment Agreement: Article 2, Section A: The Council and Employee shall determine on or before March 1, 2018 whether this agreement will be renewed, extended or terminated beyond March 1, 2019.

BACKGROUND INFORMATION: At their February 20th meeting, City Council met in Executive Session with the City Manager regarding the Manager's contract.

SUPPORTING DOCUMENTS: Proposed City Manager's 2019-2022 contract, based on Council's discussion from the February 20th City Council Meeting Executive Session.

INTERESTED PARTIES: City Council, City Manager

CITY MANAGER'S APPROVAL:

A handwritten signature in black ink, appearing to read "W. Johnson", written over a horizontal line.

EMPLOYMENT AGREEMENT

THIS AGREEMENT, entered into on the ~~2nd-27th~~ day of ~~March~~ 2017February 2019, by and between the City of Montpelier, State of Vermont, a municipal corporation, hereinafter called "Employer", as party of the first part, and William Fraser, hereinafter called "Employee", as party of the second part, both of whom understand as follows:

WITNESSETH

WHEREAS, Employer desires to continue to employ the services of Employee as City Manager of the City of Montpelier, as provided by Title X of the Charter of the City of Montpelier; and

WHEREAS, pursuant to Section 1002 of the City Charter, the Governing Board, hereinafter called "Council," desires to provide certain benefits, establish certain conditions of employment and to set working conditions of said Employee; and

WHEREAS, it is the desire of the Council to (1) secure and retain the services of Employee and to provide inducement for him to remain in such employment, (2) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security; (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of the Employee, and (4) to provide a just means for terminating Employee's services at such time as he may be unable fully to discharge his duties due to age or disability or when Employer may otherwise desire to terminate his employ; and

WHEREAS, Employee desires to accept continued 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.

Employer hereby agrees to employ William Fraser as City Manager of the City of Montpelier, Vermont, to perform the functions and duties specified in Subchapter 10 of the City Charter and by said Title 24A, V.S.A., Chapter 5, and to perform other legally permissible

and proper duties and functions as may be reasonable and necessary or as the Council shall from time to time assign.

Section 2. TERM AND RENEWAL.

A. This agreement runs from March ~~131, 2017-2019~~ through March 1, ~~20192022~~. The Council and Employee shall determine on or before March 1, ~~2018-2021~~ whether this agreement will be renewed, extended, or terminated beyond March 1, ~~20192022~~. This agreement is a successor to a prior contract between the parties running from March ~~131, 2016~~ ~~2017~~ through March ~~121, 20172019~~.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of Employee at any time, subject only to the provisions set forth in Section 4, paragraphs A and B, 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 C, of this Agreement.

D. Employee agrees to remain in the exclusive employ of Employer until termination of this Agreement, and neither to accept other employment nor to become employed by any other employer until said termination date.

The term "employed" shall not be construed to include occasional teaching, writing, performance or military reserve service performed on Employee's time off.

Section 3. SUSPENSION.

Employer may suspend the Employee with no reduction in pay and benefits at any time during the term of this Agreement, during the pendency of any investigation into allegations of malfeasance, misconduct or impropriety. Employer may only suspend Employee after a public vote and publicly adopted statement of reasons.

Section 4. TERMINATION AND SEVERANCE PAY.

A. In the event Employee is terminated by the Council, during such time that Employee is willing and able to perform his duties under this Agreement, Employer agrees to pay Employee a lump sum cash payment equal to five (5) months (defined as 22 weeks) plus one additional week per year of completed employment up to a maximum total of 52 weeks aggregate salary. To receive any payment of severance

benefits under this Agreement, Employee shall execute a General Release in favor of Employer.

During the term of this agreement, severance pay will be as follows:

Effective March 13, 2017	5 months plus 21 weeks
Effective March 1, 2018	5 months plus 22 weeks
Effective March 1, 2019	5 months plus 24 weeks
Effective March 1, 2020	5 months plus 25 weeks
Effective March 1, 2021	5 months plus 26 weeks

In the event, however, that Employee is removed from office for reasons of malfeasance, misconduct or impropriety in accordance with the procedures set forth in Section 1004 of the City Charter and following compliance with Section 3 above, if appropriate, then Employer shall have no obligation to pay the severance designated in this paragraph A.

B. Employee may, at his option, be considered terminated and receive severance pay as per section 4.A in the event that:

(a) Employer, at any time during the term of this Agreement, reduces the Employee's salary or other financial benefits in a greater percentage than an applicable across-the-board reduction for unclassified Employees of the City of Montpelier, or;

(b) Employer refuses, following written notice, to comply with any other provision benefiting Employee herein, or;

(c) The Employee resigns at the Council's request.

(d) Employer fails to renew the Contract upon expiration.

C. In the event Employee voluntarily resigns his position with Employer, then Employee shall give Employer three months notice, unless the parties otherwise agree.

Section 5. DISABILITY.

If Employee is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four successive weeks beyond any accrued sick leave, or for twenty working days of a thirty working day period, Employer shall have the option to terminate this Agreement, subject to the severance pay requirements of Section 4, paragraph A.

However, Employee shall be compensated for any accrued sick leave, vacation, holidays, compensatory time and other accrued benefits and shall be eligible for any and all disability insurance benefits provided to other city employees. Under this section, Employer may, in lieu of termination, place Employee in unpaid leave of absence status for the period of time necessary to allow Employee to meet the elimination period required to qualify for benefits under the City's long term disability insurance plan.

Section 6. SALARY.

~~_____A. Effective March 1, 2019 Employer agrees to pay Employee an annual base salary of \$126,800-130,800 payable in installments at the same time as other employees of the Employer are paid. Employee may designate a portion of that base salary as deferred compensation and shall designate a portion under Section 12B below.~~

~~B.~~

~~Effective March 1, 2020 Employer agrees to increase the annual base salary by \$1,500 and add any cost of living adjustment approved by the council for other management employees. ~~pay Employee an annual base salary of \$126,800 payable in installments at the same time as other employees of the Employer are paid. Employee may designate a portion of that base salary as deferred compensation under Section 12B below.~~~~

~~C. Effective March 1, 2021, Employer agrees to increase the annual base salary by \$1,500 and add any cost of living adjustment approved by the council for other management employees.~~

Section 7. PERFORMANCE EVALUATION.

A. The Council shall formally review and evaluate the performance of Employee at least once annually in February of each year and more frequently if desired. This review and evaluation shall be in accordance with reasonable, professional, and transparent criteria and processes, developed jointly by Employer and Employee. These criteria and processes may, from time to time, be amended by the Council in consultation with the Employee. Further, the ~~Mayer-Council~~ shall provide Employee with a summary written statement of the findings of the Council and provide an adequate opportunity for Employee to discuss his evaluation with the Council.

B. Annually, the Council and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City and attainment of the Council's policy

objectives. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

Section 8. HOURS OF WORK.

It is recognized that Employee must devote a great deal of time outside of normal office hours to business of the Employer. Employee shall accrue vacation at a rate consistent with the city's Personnel Plan limits, and will be allowed to take compensatory time off as time permits during said normal office hours. Accumulated compensatory and vacation time shall not exceed limits established in the city's Personnel Plan. It is recognized that vacation may be accrued and taken together in a block, limited to four weeks.

Section 9. OUTSIDE ACTIVITIES.

Employee shall not spend more than 10 non-business hours per week in teaching, counseling or other non-Employer connected business without the prior approval of the Council. Employee may serve as an ICMA regional Vice President, member of ICMA committees and/or VLCT board member or officer.

Section 10. AUTOMOBILE.

The Employee will provide his own business and personal transportation. The Employer and Employee agree that the employee will be eligible for mileage reimbursement at the established IRS rate for professional use of his personal vehicle.

Section 11. HEALTH AND LIFE INSURANCE.

Employer agrees to put into force and to make required premium payments for Employee for insurance policies for life, accident, sickness, major medical and dependent's group insurance (as well as any other insurance or benefits which are now or in the future offered to unclassified employees of the Employer covering Employee) and his dependents equal to that which is provided all other employees of the Employer under the Personnel Plan. In the event that the Employee is terminated under the provisions of Section 4, the Employer shall also continue full medical insurance benefits to the Employee for the duration of the severance period defined in Section 4 or the Employee may opt to receive a lump sum payment equal to the full cost of medical insurance benefits for the Employee. Costs shall include insurance premiums, city self insurance deductible allocations and HRA contributions.

Section 12. PENSION & DEFERRED COMPENSATION

A. Employee will be a member of the Vermont Municipal Employees Retirement System Plan C (VMERS-C). Employer shall make contributions to the plan as specified by VMERS. Employee shall pay the Employee's share as specified by VMERS.

B. Employer agrees to maintain an ICMA 401 (a) deferred compensation plan upon request of Employee. As per section 6A, Employee may designate a portion of base salary to this plan.

Section 13. DUES AND SUBSCRIPTIONS.

Employer intends to budget and to pay for the professional dues and subscriptions of Employee necessary for his continuation and participation in approved associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the Employer, subject to financial constraints.

Section 14. PROFESSIONAL DEVELOPMENT.

A. Employer intends to budget for and to pay the dues, registration, travel and subsistence expenses of Employee, subject to financial constraints, for professional and office travel, meetings and occasions for professional development and to pursue necessary official and other functions for Employer. Professional development expenses include, but are not limited to, membership in and attendance at conferences of the International City/County Management Association (ICMA), the Vermont League of Cities and Towns (VLCT), the Vermont Town and City Management Association (VTCMA), the National League of Cities (NLC) and such other related national, regional, state and local governmental groups and committees of which the City or Employee are members. The Employer supports the Employee's potential candidacy for and serving in the position of ICMA Northeast Regional Vice President for a three year term beginning in fall of 2020. The Employer understands that this position requires the Employee to attend regular regional and national meetings.

B. Employer also intends to budget and to pay for registration, travel and subsistence expenses for Employee for short courses, institutes and seminars for his professional development and to benefit the Employer, subject to financial constraints.

Section 15. GENERAL EXPENSES.

Employer recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by Employee and hereby agrees to reimburse or to pay these general expenses up to the

budgeted amount. Employee will purchase, maintain a smart phone and iPad and personally assume all monthly fees associated with these devices.

Section 16. CIVIC CLUB MEMBERSHIP.

Employer recognizes the desirability of representation in and before local civic and other organizations, and Employee is authorized to become a member of such civil civic clubs or organizations. Employer shall pay these expenses subject to financial constraints. Employee shall report to the Employer on each membership that he has taken out at Employer's expense.

Section 17. INDEMNIFICATION.

Employer shall defend, save harmless and indemnify Employee 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 Employee's duties and determined to be within the scope of Employee's employment as City Manager. Employer shall have the authority to compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

Section 18. BONDING.

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 19. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

A. The Employer, in consultation with the Employee, may establish such other terms and conditions of employment relating to the performance of Employee, provided such terms and conditions are consistent with or not in conflict with the provisions of this Agreement, the City Charter and the law.

B. In addition to terms provided for specifically in this agreement, the terms of Employer's Personnel Plan relating to sick leave, holidays and other fringe benefits and working conditions shall apply to Employee as they would to other unclassified employees of Employer.

Section 20. NO REDUCTION OF BENEFITS.

Employer shall not, at any time during the term of this Agreement, reduce the salary, compensation or other financial benefits of Employee, except to the degree of such a reduction across-the-board for unclassified employees of the Employer.

Section 21. NOTICES.

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, and addressed with return receipt requested to guarantee receipt.

Alternately, 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 as of the date of the return receipt's signature upon delivery.

Section 22. GENERAL PROVISIONS.

A. The text herein shall constitute the entire Agreement between the parties.

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

C. This Agreement is effective commencing March ~~131, 2017~~ 2019 through March 1, ~~2019~~ 2022.

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.

IN WITNESS WHEREOF, the City of Montpelier 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, the day and year first above written.

Mayor of the City of Montpelier

ATTEST:

City Clerk

William J. Fraser

Date