

RESOLUTION NO. 2018-41

A Resolution Amending the City Manager's Employment Agreement.

RECITALS:

On February 14, 2017, the City Council passed Resolution 2017-13, appointing Jeffrey Towery as City Manager for the City of McMinnville, Oregon, effective February 14, 2017 subject to the terms and conditions of an Employment Agreement.

On March 27, 2018, the City Council met in open session to review and discuss the results of the City Manager's one year performance evaluation and proposed amendments to the Agreement.

The amendments are included in the Employment Agreement attached hereto as Exhibit 'A'. These amendments include: clarification of reporting relationships consistent with the FY 18-19 Budget, an increase in vacation accrual to better reflect career experience, a change in mileage reimbursement, and an increase in deferred compensation to better reflect the average benefit packages of comparable cities.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON as follows:

1. The Amended Agreement with Jeffrey Towery is approved.
2. The Mayor is authorized to execute the Amended Agreement attached hereto as Exhibit 'A'.
3. That this resolution shall take effect on July 1, 2018 and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 26th day of June, 2018 by the following votes:

Ayes: Drabkin, Garvin, Menke, Peralta, Ruden, Stassens

Nays: _____

Approved this 26th day of June, 2018.



COUNCIL PRESIDENT

Approved as to form:



CITY ATTORNEY

EMPLOYMENT AGREEMENT

This Employment Agreement was entered into the 14th day of February, 2017 and amended this 26th day of June, 2018, by and between the City of McMinnville, Oregon, an Oregon municipal corporation (hereinafter referred to as "City") and Jeffrey Towery (hereinafter referred to as "City Manager").

The City and the City Manager wish to enter into a written Agreement creating a professional employment relationship. In consideration of the covenants set out in this Agreement and for the consideration specified in this Agreement, the City and the City Manager agree as follows:

SECTION I. EMPLOYMENT AND DUTIES.

- A. The City agrees to employ the City Manager and the City Manager agrees to accept City employment.
- B. The City Council expects the City Manager to adhere to the highest professional standards. His actions will always comply with those standards. He agrees to follow the Code of Ethics and Guidelines of the International City/County Management Association and the ethics rules, regulations, and laws of the State of Oregon.
- C. The City Manager shall have general supervision of the administrative affairs of the city and general control over all nonelected officers and employees of the city excepting those of the Water and Light Department and the Municipal Judge, and shall perform such other duties as may be prescribed by the council.
- D. The City Council meets annually to establish and review the City's goals and objectives. Decisions and actions generated as a result of the goal setting sessions supplement the annual budgetary process and serve as a guide in the formulation of the budget. The City Manager will be responsible for pursuing the goals and objectives of the City Council and for providing quarterly reports to the City Council regarding the progress toward achieving the Council's goals and objectives.
- E. The City Manager job description is attached to this Agreement and incorporated by this reference.
- F. It is recognized that the City Manager must devote time outside of normal office hours to conducting business for the City. To that end, the City Manager will be allowed to establish an appropriate work schedule.

SECTION II. TERM.

This Agreement will be effective as of the 15th day of February, 2017, and will continue until terminated.

- A. Nothing in this Agreement will prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of the City Manager at any time, subject only to the provisions set forth in this Agreement.
- B. Nothing in this Agreement will prevent, limit, or otherwise interfere with the right of the City Manager to resign at any time, subject only to the provisions set forth in this Agreement.
- C. The City Manager agrees to remain in the exclusive employ of the City during the term of this Agreement.

SECTION III. TERMINATION AND SEVERANCE

- A. Termination without Cause by the City. This Agreement may be terminated at any time by a majority of the City Council for any reason whatsoever. If the City Manager is, at the time of termination, willing and able to continue performing the duties of City Manager, and if he executes and does not revoke a full release of claims in a form satisfactory to the City, the City will provide the City Manager with six months of severance pay and will also pay the City Manager's COBRA costs for up to six months for termination without cause. The severance pay will be subject to lawful withholding or deductions.
- B. Termination without Cause by the City Manager. This Agreement may be terminated by the City Manager for any reason whatsoever, upon ninety (90) calendar days written notice to the City. No severance will be paid in the case of a voluntary resignation.
- C. Termination for Cause. In the event of a for-cause termination, this Agreement shall not be deemed to waive statutory or constitutional rights or remedies otherwise available to the City Manager. The City Manager's employment with the City may be terminated immediately in the sole discretion of a majority of the City Council members upon the occurrence of any of the following events:
 - 1. The City Manager fails, refuses, or is unable to comply with the written policies, standards, and regulations of the City that are in existence at the time, or fails, refuses, or is unable to comply with any then-current state or federal laws;
 - 2. Dishonesty in any form;
 - 3. The City Council, after a thorough investigation, has reasonable cause to believe the City Manager has committed fraud, misappropriated City funds, goods, or services for the City Manager's own benefit, or other acts of misconduct that cause injury to the City or affect the City Manager's ability to perform his job; or
 - 4. The City Manager fails to perform his duties as City Manager faithfully and fully.

No severance will be paid in the case of a termination for cause.

- D. If the City reduces the salary or other financial benefits of the City Manager in a greater percentage than an applicable across the board reduction for other regular budgeted non-represented full time employees of the City, or if the City Manager resigns at the request of the City Council, then the City Manager may deem this Agreement to be involuntarily terminated without cause and he will be entitled to severance pay consistent with subsection A of this section.

SECTION IV. RESIDENCY.

The City Manager will reside within the City limits during the term of this Agreement.

SECTION V. PERFORMANCE EVALUATION.

A facilitated performance evaluation will be conducted after six months and after twelve months of employment. Subsequent facilitated evaluations will be conducted annually.

SECTION VI. SALARY, BENEFITS, AND MOVING EXPENSES.

- A. **Salary.** Starting with the first day of employment and continuing throughout the term of this Agreement, the City will pay the City Manager an annual salary of \$150,000. The salary will be paid to the City Manager at the same time as all regular budgeted non-represented full time employees of the City are paid. This salary may be adjusted from time to time, at the discretion of the City Council. The City Manager will receive the same cost of living adjustments that regular budgeted non-represented full time employees of the City receive.
- B. **Vacation.** The City Manager will be credited with forty (40) hours of vacation as of his first day of employment and will subsequently accrue vacation at the rate of a regular budgeted non-represented full time employee of the City with twenty one or more years of service: currently 13.33 hours per month. This rate will be increased as specified in the Employee Handbook in the same manner as used for other non-represented, regular budgeted, full time employees. All vacation hours will be accessible immediately. In the event employment with the City is terminated, either voluntarily or otherwise, the City Manager will be paid an amount equal to the value of the City Manager's accrued vacation hours. If the City Manager's employment is terminated either with cause or because of the City Manager's resignation within one year of the first day of the City Manager's employment by the City, the forty hours in the vacation bank will not be paid out to the City Manager or, if hours have been used, the City will offset those hours against the City Manager's final paycheck.
- C. **Sick Leave.** The City Manager will be credited with forty (40) hours of sick leave as of his first day of employment and will subsequently accrue sick leave at the same rate as other regular budgeted non-represented full time employees of the City: currently 8 hours per month. In the event employment with the City is terminated, either voluntarily or otherwise, the City Manager will have unused sick leave applied toward PERS benefits, as allowed by state law.

- D. Management Leave. The City Manager will be credited with forty (40) hours of management leave as of his first day of employment. Management leave is provided to FLSA exempt City employees on an annual basis. It is granted each July 1. It is compensable only in the form of leave and is non-cumulative.
- E. Car Allowance. The City will compensate the City Manager \$500 per month for the use of the City Manager's private automobile. Travel beyond fifty (50) miles of the city limits will be reimbursed at normal City rates.
- F. Moving Expenses. In order to help defray the costs of relocation, the City will reimburse the City Manager for reasonable moving expenses and temporary living expenses in an amount up to, but not to exceed, \$15,000, upon presentation of receipts. In the event that the City Manager resigns his position or is terminated for cause within three years of his start date, the City Manager will repay all reimbursed funds on a prorated basis based on time of service, and the City Manager agrees that such amount may be withheld from his final paycheck.
- G. Except as otherwise provided in this Agreement and the Employee Handbook, the City Manager will receive the same benefits as other non-represented, regular budgeted, full time employees of the City.

SECTION VII. RETIREMENT, DEFERRED COMPENSATION, AND INSURANCE.

- A. Retirement. The City agrees to contribute into the Public Employees' Retirement System (PERS), on the City Manager's behalf, a percentage amount equal to the percentage given other non-represented, regular budgeted, full-time employees, and as consistent with state law.
- B. The City Manager will be eligible to participate in the City's deferred compensation program. If the City Manager elects to participate, the City will contribute 8% of the City Manager's annual salary.
- C. Health Insurance. At the City Manager's option, the City agrees to provide coverage and make required premium payments for comprehensive medical, dental, and vision plans for the City Manager and his family. The City Manager will pay the same percentage of his coverage premium as do all non-represented, regular budgeted, full time City employees.
- D. Life Insurance. The City will provide, and make the premium payments for, the same long term disability and/or life insurance coverage for the City Manager as for all non-represented, regular budgeted, full time City employees.

SECTION VIII. PROFESSIONAL DEVELOPMENT, COMMUNITY INVOLVEMENT, AND EXPENSE.

- A. The City will pay for the City Manager's membership in the Oregon City/County Management Association (OCCMA) and the International City/County Management

Association (ICMA). The City will pay for the City Manager to attend the OCCMA conferences. The City will pay for the City Manager's attendance at ICMA conferences and other related conferences insofar as budgeted funds allow.

- B. The City will pay the City Manager's dues to civic service groups, such as Rotary, Kiwanis, and the Lions.
- C. The City recognizes that certain expenses will be incurred by the City Manager on behalf of the City and agrees to reimburse or pay these expenses upon receipt of appropriate confirmation.

SECTION IX. BONDING.

Pursuant to the City Charter, the City Manager will "give a bond in such amount and with such surety as may be approved by the council." The City has provided for this Charter requirement through Citycounty Insurance Services' excess crime coverage. This insurance meets statutory bonding requirements.

SECTION X. INDEMNIFICATION.

The City agrees that it will defend, hold harmless, and indemnify the City Manager from all demands, claims, suits, actions, errors, or other omissions in legal proceedings brought against the City Manager in his individual capacity, in his official capacity, or in his official capacity as agent or employee of the City, provided the incident arose while the City Manager was acting within the scope of his employment and within the scope of this Agreement. If, in the good faith opinion of the City Manager, a conflict exists regarding the defense of any such claim between the legal position of the City and the City Manager, the City Manager may engage counsel, in which event, the City will indemnify the City Manager for the cost of legal counsel.

SECTION XI. CONFIDENTIALITY.

- A. The City Manager recognizes that, through his employment with the City, he will have access to confidential information that needs to be protected from improper disclosure. The City Manager agrees that he will not directly or indirectly use any confidential information except as necessary to perform the duties of the City Manager, and will not directly or indirectly divulge such information to anyone outside the City organization without the City's prior written consent, unless required by court order or, if in the opinion of the City Attorney, by state law.
- B. The confidentiality provisions of this Agreement will remain in full force and effect for a period of two years after the termination of this Agreement.

SECTION XII. GENERAL PROVISIONS.

- A. Amendment. Nothing will restrict the ability of the City and the City Manager to amend the terms of this Agreement. Amendments will be valid only if they are made in writing and are signed by both the City and City Manager.

- B. Severability. If any provision of this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement will be deemed severable and will remain in full force and effect.
- C. Choice of Law / Venue. This Agreement will be governed by, construed, and interpreted in accordance with the laws of the State of Oregon without reference to principles of conflict of laws. In case of a lawsuit arising from this Agreement, for enforcement and/or damages for breach or violation, the parties agree that the venue will be in Yamhill County Circuit Court, to the exclusion of all other courts in any other venue. The prevailing party in a lawsuit will be entitled to reasonable attorney's fees to be fixed by the trial court. If an appeal is taken from the decision of the trial court, the fees will include any additional sums fixed by the appellate court as reasonable attorney's fees in the appellate court, together with prevailing party costs and disbursements incurred therein.
- D. This Agreement was the result of negotiation by the parties and thus the parties agree that the rule of construction requiring that the Agreement will be construed against the drafter will not apply to the interpretation of this Agreement. Both parties acknowledge that they have read and understand the Agreement, enter into it voluntarily, and have had opportunity to have it reviewed by counsel of their choice.
- E. The failure of either party to enforce any provision of this Agreement will not be construed as a waiver or limitation of that party's right subsequently to enforce and compel strict compliance with every provision of this Agreement.
- F. Merger. This Agreement contains the entire Agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

Mayor Scott Hill

Jeffrey Towery

Date

Date

APPROVED AS TO FORM:

City Attorney