



TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney *LG*
DATE: May 8, 2012
SUBJECT: Proposed Contract for Temporary City Manager

Enclosed please find a proposed contract between the City of Troy and Interim City Manager Michael W. Culpepper. This contract is based on the 2009 City Manager contract prepared by outside Labor Attorney Craig Lange. It has been negotiated with Mr. Culpepper, and modified to fit the Interim City Manager position. For example, this contract specifically precludes entitlement to retirement contributions and insurance, etc..

City Administration recommends approval of the proposed contract. Mr. Culpepper is expected to start his position on May 17, 2012.

EMPLOYMENT AGREEMENT

THIS AGREEMENT, made on the _____ day of May 2012, by and between the City of Troy, Michigan, a municipal corporation, hereinafter referred to as the "City" and Michael W. Culpepper, hereinafter referred to as the "Executive."

As the City desires to retain the Executive as its City Manager and the Executive desires to temporarily serve the City as its City Manager; the City and the Executive agree as follows:

SECTION 1. PERIOD OF EMPLOYMENT

This Agreement shall be effective starting the week of May 14, 2012, and shall continue for an indefinite period, and may be terminated subject to the provisions of Section 12 of this Agreement. The Executive shall assume the duties of City Manager starting at 5 pm on May 18, 2012. The parties anticipate that the period of employment will not exceed 120 days, and in reliance on that time limitation, Executive has made commitments beyond that date which would require scheduling flexibility if a longer contractual period is required.

SECTION 2. EXECUTIVE'S DUTIES

During the period of employment with the City, the Executive shall perform the duties of the City Manager as set out in the applicable statutes of the State of Michigan, the Charter of the City of Troy, all ordinances and resolutions lawfully enacted, and other such duties as the Council of the City of Troy may lawfully assign to the Executive.

**SECTION 3.
OTHER EMPLOYMENT**

The Executive shall devote his primary attention, knowledge and skills in the interest of the City of Troy, and the City shall be entitled to full-time benefits arising from incident to the full-time work, services, and advice of the Executive. The Executive may from time to time teach, lecture, consult or make presentations that will not conflict or interfere with his work for the City.

The Executive agrees to execute all oaths and provide all bonds with surety as required by law.

**SECTION 4.
HOURS OF WORK**

The parties realize that the position of City Manager requires the Executive holding such position to work weekends, evenings, and other irregular hours at locations other than the City's administrative offices and during hours that said offices are not open. It is understood and agreed that the Executive shall work whatever hours that may be necessary in order for him to fulfill the requirements of the position of Executive, as described herein and otherwise. It is understood that Executive will have flexible working hours.

**SECTION 5.
EXECUTIVE'S SALARY**

The Executive shall receive a salary at an hourly rate of seventy five (\$75) per hour for the period commencing May 17, 2012 and that salary shall be payable in installments as per the pay plan generally applicable to other City exempt employees. From time to time, the City can review the Executive's performance.

**SECTION 6.
AUTOMOBILE MILEAGE REIMBURSEMENT**

The Executive shall receive reimbursement, based on the federally reimbursed rates, for the use of his personal vehicle for any necessary City business.

**SECTION 7.
OTHER BUSINESS EXPENSE**

The City shall reimburse the Executive for all other reasonable employment-related expenses, subject to the administrative policies concerning such expenses, as currently exist in the Exempt Employee's Handbook. Executive shall also be provided with a procurement card, and shall be subject to the administrative policies concerning it. It is specifically understood that such business activities are to be undertaken by the Executive as may be required by the City, and shall be considered part of the Executive duties.

**SECTION 8.
VACATION LEAVE**

The Executive shall receive 40 hours of paid vacation for 2012, which can be taken at any time after May 17, 2012, and which shall be paid at the hourly rate.

**SECTION 9.
NON-PARTICIPATION IN EMPLOYEES RETIREMENT SYSTEM**

The Executive shall not be a member of the City of Troy Retirement System as provided in Chapter 10 of the City's Ordinances. He shall not accrue pension benefits for services rendered to the City pursuant to this Agreement under either the City's Defined Benefit or Defined Contribution Plans.

**SECTION 10.
GROUP MEDICAL INSURANCE**

The Executive shall not participate in Hospitalization or Prescription Drug Insurance coverage as provided to the City's other exempt employees.

**SECTION 11.
PUBLIC OFFICIAL LIABILITY INSURANCE
AND REPRESENTATION BY LEGAL COUNSEL**

The City shall provide the Executive with public official liability insurance in accordance with that provided other officers in the City. In addition, the City shall provide the Executive legal representation as otherwise provided for other City officials and as provided by ordinance, except for malicious, wanton criminal conduct arising from the Executive's action or conduct and/or unless the City Council determines that the Executive was clearly acting outside of the scope of his duties when engaged in the actions or conduct which form the basis for such charges or claims.

**SECTION 12.
TERMINATION**

The City or the Executive may terminate this Agreement at any time with or without cause.

1. In the event the Executive terminates this Agreement, he shall give no less than thirty (30) days prior written notice to the City Clerk and in said notice advise the City of the date of termination. If the Executive terminates this Agreement, all rights of the Executive to compensation and the further accrual of benefits pursuant to this Agreement shall cease as of the effective date of such termination.

2. In the event the City terminates this Agreement without cause, it shall give no less than thirty (30) days prior written notice to Executive and in said notice advise Executive of the date of the termination.

3. The City can also terminate this Agreement with cause for any of the following:

- (a) Fraud, dishonesty, or other intentional misconduct either:
 - 1. in the performance of Executive's duties and responsibilities pursuant to this Agreement, or
 - 2. which has a material adverse impact on the City, its officials, administrators or the Executive.
- (b) The use by Executive of alcohol, drugs, or any other intoxicant or controlled substance, in such a manner as to impair his ability to perform his duties and responsibilities pursuant to this Agreement in a competent and diligent manner or in a manner which harms the reputation of the City.
- (c) The Executive's arrest and binding over for trial or a plea of guilty or nolo contendere to a crime providing for a term of imprisonment (other than traffic violations and crimes not requiring the knowing involvement of the Executive in the commission thereof).
- (d) (i) A pattern of neglect or persistent failure to perform the duties herein contained with respect to duties previously communicated to the Executive in writing by the City Council but only after the Executive has been provided notice by the City Council of its

dissatisfaction with the performance of said duties and Executive has been provided a reasonable opportunity to correct his performance;

(ii) Otherwise willful misconduct in connection with the performance of his duties hereunder.

4. If the City terminates the Executive's employment with cause, as set forth above in sub-section 3, the termination can be effective immediately, and all rights of the Executive to compensation and further accrual of benefits shall cease as of the effective date of such termination.

SECTION 13. ARBITRATION

It is mutually agreed between the Executive and the City that arbitration shall be the sole and exclusive remedy to redress any grievance which includes, but is not limited to any dispute, claim or controversy involving the interpretation of this Agreement, the terms, conditions or termination of this Agreement; and any and all disputes, claims or controversies arising as a result of the Employment of the Executive by the City, including claims under federal, state or local civil rights statutes such as Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Elliott-Larsen Civil Rights Act and the Persons with Disabilities Civil Rights Act. It is the intention of the parties that the arbitration decision will be final and binding and that any and all grievances shall be disposed of as follows:

1. Any and all grievances must be submitted in writing by the aggrieved party within thirty (30) days from the date of termination of this Agreement;

2. Within thirty (30) days following the submission of the written grievance, the party to whom the grievance is submitted shall respond in writing. If no written response is submitted within thirty (30) days, the grievance shall be deemed denied;

3. If the grievance is denied, either party may, within thirty (30) days of such denial, refer the grievance to arbitration in Troy, Michigan. The arbitrator shall be chosen in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association then in effect, and the expense of the arbitration shall be shared equally by the City and the Executive.

4. Any grievance shall be deemed waived unless presented within the time limits specified above. The arbitrator shall not have jurisdiction or authority to change, add to or subtract from any of the provisions of this Agreement. The arbitrator's sole authority shall be to interpret or apply the provisions of this Agreement. The parties hereby acknowledge that since arbitration is the exclusive remedy with respect to any grievance hereunder, neither party has the right to resort to any federal, state or local court or administrative agency concerning breaches of this Agreement and that the decision of the arbitrator shall be a complete defense to any suit, action or proceeding instituted in any federal, state or local court or before any administrative agency with respect to any dispute which is arbitrable as herein set forth. The arbitration provisions hereof shall, with respect to any grievance, survive the termination or expiration of this Agreement.

SECTION 14. COMPLETE AGREEMENT

This written Agreement embodies the whole agreement between the parties and there are no inducements, promises, terms, conditions or other obligations in this

Agreement. Any amendments to this Agreement shall be in writing and executed by both the City and the Executive.

**SECTION 15.
GOVERNING LAW**

This Agreement shall be construed and enforced in accordance with the laws of the State of Michigan.

**SECTION 16.
SURVIVING PROVISIONS**

All provisions, which by their terms or by reasonable implication may be performed after termination of this Agreement, shall survive termination of this Agreement.

**SECTION 17.
REPRESENTATIONS AND WARRANTIES**

Executive represents and warrants to the City that he is free to enter into this Agreement and that he has no prior or other obligations or commitments of any kind to anyone that would in any way hinder or interfere with his acceptance of, or the full, uninhibited and faithful performance of, his employment under or the exercise of his best efforts as an employee of the City.

**SECTION 18.
WAIVERS**

The failure of either party hereto at any time or from time to time to require performance of any of the other party's obligations under this Agreement shall in no manner affect the right to enforce any provision of this Agreement at a subsequent time,

and the waiver of any rights arising out of any breach shall not be construed as a waiver of any rights arising out of any subsequent breach.

**SECTION 19.
SURVIVAL**

If any of the provisions, terms or clauses of this Agreement are declared illegal, unenforceable or ineffective in a legal forum or by the operation of law, those provisions, terms and clauses shall be deemed severable and all other provisions, terms and clauses shall remain valid and binding.

**SECTION 20.
WARRANTIES**

The individuals signing this Agreement represent and warrant that they, and each of them, are duly authorized and empowered to act on behalf of and to sign for the parties for whom they have signed respectively.

CITY OF TROY, a Michigan municipal Corporation

Witnesses:

Executive:

By: _____
Janice L. Daniels, Mayor

By: _____
M. Aileen Bittner, City Clerk

By: _____
Michael W. Culpepper