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Troy, MI 48084
troymi.gov

I-04

CITY COUNCIL AGENDA ITEM

Date: January 21, 2019
To: Honorable Mayor and City Council Members
From: Lori Grigg Bluhm, City Attorney
Subject: City Manager Employment Agreement

At the November 19, 2018 City Council meeting, City Council appointed Mark F. Miller as the City Manager, and asked for the Employment Agreement to be reviewed and any new terms negotiated between Mr. Miller and our outside legal counsel, Thomas McGraw of McGraw Morris.

Enclosed please find a proposed City Manager Employment Agreement for your consideration. Although the revised terms were negotiated by our outside legal counsel, the Agreement is changed in only a few instances from the City's previous employment agreements with its direct reports. Mr. Miller has agreed to the terms in this Agreement.

Mr. McGraw has conveyed a willingness to be present at the City Council meeting, if requested in advance, to discuss the modifications.

**CITY MANAGER
EMPLOYMENT AGREEMENT**

THIS AGREEMENT, made on the 1st day of January, 2019, by and between the City of Troy, Michigan, a municipal corporation, hereinafter referred to as the “City” and Mark F. Miller, hereinafter referred to as the “City Manager.”

**SECTION 1.
PERIOD OF EMPLOYMENT**

This Agreement shall be effective as of January 1, 2019 and shall continue for 5 years and may be terminated subject to the provisions of Section 11 of this Agreement.

**SECTION 2.
CITY MANAGER’S DUTIES**

The City Council agrees to continue to employ City Manager to 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 City Manager. The City Manager shall perform these duties with the highest moral standards and principals, including but not limited to those set forth in the International City/County Management Association (ICMA) Code of Ethics.

The City Manager shall at all times faithfully, industriously and to the best of his ability, experience and talents, perform all of the duties that may be required of and from him pursuant to the express and implicit terms of this Agreement, to the reasonable satisfaction of the Council.

**SECTION 3.
OTHER EMPLOYMENT**

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

**SECTION 4.
HOURS OF WORK**

The parties realize that the position requires the City Manager 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 City Manager shall work whatever hours that may be necessary in order for him to fulfill the

requirements of the position of City Manager, as described herein and otherwise, but in any event, no less than forty (40) hours per week.

SECTION 5. CITY MANAGER SALARY

The City agrees to employ City Manager at an annual base salary of **\$167,750**. The City also agrees to review this salary each successive year of this Agreement. The review shall take into consideration the performance of City Manager, comparable salary information from other relevant municipalities and other pay and benefit data, both internally and externally. The base salary of City Manager shall be evaluated annually prior to the anniversary date of this Agreement.

SECTION 6. BENEFITS

- A. The City of Troy shall make a total annual contribution of \$9,000 on or before July 1st of each year to the ICMA Retirement Corporation Deferred Compensation Plan on behalf of the City Manager.
- B. The City agrees City Manager is entitled to twenty-five (25) days paid vacation per year as of the commencement of his employment.
- C. In addition to Section 6(A), the City shall contribute a sum equal of 12% of City Managers salary and City Manager shall contribute 4% of his salary to the ICMA RC plan. Said contribution shall be handled as a payroll deduction pursuant to City practice or policy for all employees.
- D. The City Manager shall participate in the City cellular telephone phone plan and policy. The City shall provide the City Manager with a City issued computer and docking station.
- E. Prior to taking the position of City Manager, City Manager was eligible for retirement. He shall retain this eligibility and continue to accrue retirement benefits during his position as City Manager and notwithstanding the nature of any future retirement or termination.
- F. Prior to taking this position of City Manager, City Manager had attained 18 years of employment and earned 72% health care insurance coverage in retirement. He shall continue to accrue an additional 4% of coverage each year notwithstanding the nature of any retirement or termination. If this contract is not renewed at the end of five (5) years, for any reason, or if the City Manager is terminated without cause prior to the expiration of this five (5) year contract, City Manager shall be entitled to 100% retirement health care coverage after retirement.

- G. The City shall reimburse City Manager for the cost of a complete physical examination for the City Manager, should the City Manager choose to obtain a complete physical, including a cardiopulmonary stress test, once every two (2) years.

**SECTION 7
AUTOMOBILE ALLOWANCE**

The City Manager shall receive an automobile allowance of \$425 per month during the time he is actively working during the term of this Agreement as City Manager for the City. This amount shall be increased from time to time to the extent such allowance is increased for other exempt employees within the City. This allowance shall be the total compensation to the City Manager for the use of his personal automobile in the course of City business and shall be paid in lieu of mileage or any other method of reimbursement. The City Manager shall use his vehicle for all City business that he performs. The City Manager shall provide proof of insurance to the City, which the City Manager shall be responsible for maintaining, and at his expense, in a coverage amount of not less than \$250,000 bodily injury and \$250,000 property damage.

**SECTION 8
OTHER BUSINESS EXPENSE**

The City shall reimburse the City Manager for all reasonable employment related expenses, subject to the administrative policies concerning such expenses, as currently exist in the City of Troy Employee Handbook for full time employees revised 06/09, as may be amended and otherwise. Such expenses may include, but are not limited to, the following: air travel, taxi and automobile rental, lodging, meals, memberships and subscriptions to the publications of the International City Managers Association, the Michigan Municipal Executives, Government Finance Officers Association, and such other national, regional, state and local governmental groups thereof which City Manager is a member. Registration fees shall be paid for training programs offered by such organizations, and travel and incidental costs relating to attending such programs or conferences and meetings of such organizations. It is specifically understood that such activities are to be undertaken by the City Manager and shall be considered part of the City Managers duties. In accordance with the Purchasing Policy, other incidental expenses incurred by the City Manager during the course of his duties will also be reimbursed including business meals, supplies, and other costs associated with the position of City Manager.

**SECTION 9
PERFORMANCE REVIEW**

The Council shall annually conduct a performance review of the job performance of City Manager. City Manager may request that this performance review be conducted in executive session as provided by the state statute. The review shall be constructive in

nature, the format and basis of which shall be discussed and agreed upon by City Manager and the City Council in advance, and with the intent of establishing a cooperative relationship to best serve the residents of the City of Troy.

**SECTION 10.
PUBLIC OFFICIAL LIABILITY INSURANCE
AND REPRESENTATION BY LEGAL COUNSEL**

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

**SECTION 11.
TERMINATION**

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

The Employee may terminate his own employment by giving the City Council, through the City Clerk, at least sixty (60) day's notice in writing unless both parties mutually agree that shorter notice is acceptable.

The City shall also have the right to terminate the City Manager's employment without just cause. In the event that the City terminates the City Manager's employment without just cause, and the City Manager is willing, able, and ready to perform the duties as City Manager, the City shall pay the City Manager the equivalent of six (6) months salary at the time of termination and provide City Manager with 100% health insurance coverage as set forth in Section 6(F), above. The payment by the City shall be considered full satisfaction of the City's obligation under this Agreement. The City shall not, however, be required to pay said sum to the City Manager until such time as the City Manager executes a full and complete release in a form acceptable to the City.

The City shall also have the right to terminate the City Manager's employment with just cause, and all rights of the City Manager as to compensation and benefits under this Agreement shall cease as of the date of such termination. Just cause shall include, but is not limited to, any of the following:

(a) Fraud, dishonesty, or other intentional misconduct either:

- 1.) in the performance of City Manager's duties and responsibilities pursuant to this Agreement, or
- 2.) which has a material adverse impact on the City, its officials, administrators or the City Manager.

(b) The use by City Manager 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 City Manager's arrest for a crime providing for a term of imprisonment (other than traffic violations and crimes not requiring the knowing involvement of the City Manager in the commission thereof).

(d) 1.) A pattern of neglect or persistent failure to perform the duties herein contained with respect to duties previously communicated to the City Manager in writing by the City Council but only after the City Manager has been provided notice by the City Council of its dissatisfaction with the performance of said duties and City Manager has been provided a reasonable opportunity to correct his performance;
2.) Otherwise willful misconduct in connection with the performance of his duties hereunder.

SECTION 12. ELIGIBILITY FOR BENEFITS AFFORDED OTHER CITY OFFICIALS

Except as otherwise provided in this Agreement, the City Manager shall receive the same benefits as provided to the City's exempt employees including: compensatory time, vacation leave, sick leave, Group Medical Insurance Benefits, life and other insurance, holidays and disability as is described in the City of Troy Employee Handbook for full time employees, and exempt benefits summary, revised 12/14, and which may be modified from time to time during the course of this Agreement.

SECTION 13. ARBITRATION

It is mutually agreed between the City Manager 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 City Manager 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 to the City Clerk, with a copy served upon the City Attorney, 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 City Manager.

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 City Manager.

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**

City Manager 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

Witness

By: _____
Dane M. Slater, Mayor

Witness

By: _____
M. Aileen Dickson, City Clerk

CITY MANAGER

Witness

By: _____
Mark F. Miller

Witness